

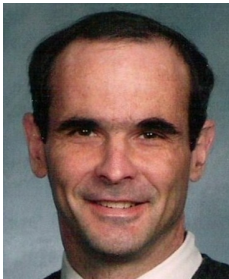
# Dental Practice Legal Update

November, 2017

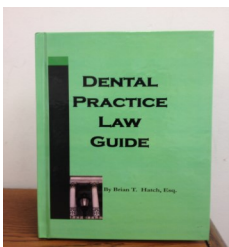
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**Hatch Legal Group**  
**8 North Main Street**  
**Attleboro, MA 02703**  
**Phone: (508)222-6400**  
**hatchlegalgroup.com**  
**brianhatch**  
**@hatchlawoffices.com**



**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**



## Dentists' Complaints About Delta Heard Before Legislature

Massachusetts dentists who felt they were coerced by Delta Dental of Massachusetts earlier this year into signing contracts which included decreases in reimbursements complained to the Massachusetts Legislature's Committee on Financial Services on October 30th in testimony concerning a bill which would require more state controls on insurance companies. Dentists have been upset that they were given a short period of time to decide whether to sign a new provider contract for the Delta Total Choice Preferred Provider Organization (PPO), which was proposed in conjunction with a transition of Delta Dental of Massachusetts to a profit making company, or face a lockout of one year. The Massachusetts Dental Society (MDS) has petitioned the Division of Insurance as well as Attorney General Maura Healey to conduct a review of the PPO plan, which has over 4,000 dentists as participants, the largest in the state.

The bill under consideration, filed by Representative Angelo Puppolo, Jr. (D-Springfield), H2197, would require the insurance commissioner to approve all contracts between Delta and its affiliates, approve dental fees, and have oversight over any actions by dental insurers to interfere with insurance members' decisions regarding their choice of a dentist. Dentists at the hearing complained about the monopolistic control of Delta over the dental insurance

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## Using Peer Review to Resolve Patient Complaints

It is often difficult to deal with the situation of a disgruntled patient who demands a refund for dental services if the treatment is not satisfactory. The first inclination of a dentist is to say that "I did nothing wrong" and that another dentist would have done the exact same treatment. Dentistry is not an exact science, and there are times when treatments don't work out as planned, causing the necessity for additional treatment to resolve the situation or resulting in other adverse effects. Should you give a refund or free corrective treatment every time a patient is unhappy with the result?

If the patient insists another dentist would have done it differently, and the first dentist disagrees, the situation could escalate into a lawsuit, causing both parties to resort to attorneys or malpractice insurers, or a complaint to the Board of Registration in Dentistry. Another way of resolving this stalemate is a method offered by many dental societies, including the Massachusetts Dental Society—peer review. To use the Massachusetts Dental Society peer review program there must not be a legal complaint filed or a complaint before the Board of Registration in Dentistry. Neither side can use an attorney, but dentists who are volunteers assist in resolving the complaint. There must not be a demand for additional money for emotional distress, consequential damages, additional unneeded dental treatment, or other legal issues not directly related to dental treatment.

Either party may submit a complaint

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## Using Peer Review to Resolve Patient Complaints

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Either party may submit a complaint or a request to initiate the peer review process at the Massachusetts Dental Society. The state review chair then can find out if the dentist and the patient want to use a mediator, who is a dentist from the district where the treatment was performed, to help resolve the complaint. If a mediator is successful in getting the parties to achieve a resolution, then a written report of the mediator to the state peer review chair can close the case. If no agreement is reached a three-dentist committee can be appointed to have a hearing on the complaint, with evidence consisting of clinical records, patient examinations and testimony of the parties and others such

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## Dentists' Complaints About Delta Heard by Legislature

(cont. from p.1)

market in Massachusetts, and they stated they felt that their patients were suffering because they were forced to pay without insurance if their dentists did not sign on to the new Delta plan because of business concerns.

Delta Dental of Massachusetts also had representatives at the hearing, including President Dennis Leonard, who said that the new plan was "good news for employers and their families" and that it is a positive step towards reducing health care costs in the state by offering a more affordable option for dental care for patients. A health care broker, Paul Begaan of Incentive Group, stated that some businesses will be able offer dental benefits for the first time because of the lower costs of the new plan. The new PPO plan, which dentists needed to sign up for earlier this year or not participate as a Delta provider for one year, was approved by the Division of Insurance in July of this year.

as dentists who treated the patients after the procedure at issue was performed.

The committee will convene to make a decision and recommendations on how to resolve the case. A refund or partial refund can be recommended, and, if so, a settlement agreement must be signed by the patient releasing the dentist from any further liability or possibility of new litigation involving this treatment. There is also a possibility that either party may appeal the recommendations based on new information or the position that the committee did not weigh the evidence correctly. There is a new hearing held, and the previous evidence submitted, or new evidence can be evaluated so that the appeals committee can make a decision to uphold the original decision or revise or reverse it.

A key part of using the peer review process is that the contractual

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## Veterans File Class Action Against U.S. for Using Unsterilized Instruments

Six veterans who were treated for dentistry at the Tomah, Virginia Veterans Affairs Center have filed a class-action lawsuit against the U.S. government because of emotional distress caused by the use of unsterilized equipment on hundreds of veterans between October, 2015 and October, 2016. The suit targets specifically a former Veterans Administration dentist, Dr. Thomas Schiller, who had been the subject of complaints by a dental assistant and hygienist about his failure to use personal protective equipment and reusing dental burs when treating patients. Schiller was suspended in December of 2016 and resigned after the complaints were made known to the acting chief of dental services at the Center. An internal review found that he used unsterilized burs on about 112 of the 592 patients he treated during the year long period in question, and failed to use protective equipment when treating about 243 of them. The six ex-patients who filed the lawsuit were notified that they should be tested for HIV, hepatitis B and hepatitis C. They were forced to wait about six months for test results to come back confirming that they had not contracted those diseases. In the

settlement and release is binding on the patient, and therefore the dentist will not face further judicial review. In the settlement agreement, there is no admission of liability which can be used in court later, and all proceedings are confidential. Malpractice insurers do not need to use their resources to defend litigation and increase premiums as a result, and an official record of a complaint at the Board will not appear on the dentist's record. Even if the patient refuses to agree to a release in exchange for a settlement amount, the peer review committees' findings carry great weight if the patient decides to file suit instead, since before a malpractice action can be started in a trial court, a formal medical malpractice tribunal, also made up of peers and other professionals, must decide whether a court should hear the action in a malpractice trial. Bypassing the entire legal process and getting the issue resolved informally though peer review may preserve the dentist's record as well as patient relations.

meantime, they claim that they "were forced to consider that they may have been infected with deadly viruses, may die as a result of having been infected., and/or may have knowingly infected their loved ones with deadly viruses."

## Keene, NH Pediatric Dentist Investigated for Abuse and Neglect of Dental Patients

The New Hampshire Department of Justice is investigating charges that a Keene, New Hampshire pediatric dentist, Dr. Blake C. Wullbrandt, practiced while impaired and committed other possible criminal actions amounting to child abuse and neglect of patients. The NH state dental board issued an order of emergency license suspension in August after it had received allegations that Wullbrandt had performed treatments while impaired on at least two occasions, in 2015 and in July of this year.

***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***

## **Mail Order Orthodontics Provider Smile Direct Involved in Legal Battles**

Smile Direct Club was started three years ago as a low price alternative to having an orthodontist provide an orthodontic treatment plan and supervision throughout the teeth straightening process. The American Association of Orthodontists (AAO), dental boards and state attorney generals are now questioning in legal actions whether the company's structure violates laws against unlicensed practice of dentistry. Smile Direct doesn't require x-rays or an in office visit with an orthodontist in order to have tooth aligners made and mailed to a consumer to wear until teeth are straightened. The consumer goes to a "SmileShop" where a technician takes photographs of their mouth with an iPad and scans their teeth with a white wand. That information is sent to a dentist or orthodontist, who uses computer simulation to design an aligner which is then shipped by mail to the consumer. The aligners are used at home without follow up treatment visits to an orthodontist.

The AAO has filed complaints with dental boards and state attorney generals in 36 states, alleging that this type of treatment is illegal and creates risks to the patient that laws against unlicensed practice of dentistry are designed to prevent. The California and West Virginia state dental boards have opened an investigation into Smile Direct, and in August of this year, the Alaska dental board voted to request that a cease-and-desist letter be issued to Smile Direct by the state's licensing authority. The AAO has the position that taking impressions and delivering dental appliances to patients can be done under state law by licensed professionals only, and that remote orthodontics through computer simulation without examination and follow up cannot accurately provide treatment to adjust teeth and bites.

Smile Direct, which was founded by two non-dentists, Alex Fenkell and Jordan Katzman, argues that its role is only as a middleman which matches up patients with licensed orthodontists who are paid to provide a role in the aligner design process. It has filed a lawsuit

against the Michigan Dental Association in U.S. District Court in Michigan for libel because of its August, 2017 article in the Journal of the Michigan Dental Association criticizing Smile Direct. Align Technology, owner of the Invisalign products used by dentists and orthodontists for in office treatment, owns a 19% share in Smile Direct.

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## **8 Hour Surgery By Unlicensed Dental Technician Results in Arrest**

After meeting a woman at a San Antonio, Texas restaurant who said she had severe dental pain, 55 year old dental technician Isidro de Jesus Manjarres, who did not have a dental license, told her that he was a dentist and could provide treatment, including extractions and bridges, for her at his home. She agreed, and Manjarres performed an 8 hour surgery, during which he gave her anesthetics 12 times, extracted two teeth and used a grinding tool to work on other teeth in the area where the bridges were to be put. He collected half of the agreed upon \$3,600 sum for the first of two of the planned treatment sessions. The victim went to a licensed dentist after the surgery who diagnosed "extreme damage" to her mouth which has cost her at least \$11,000 to correct. Manjarres told police that he had treated patients at his home seven years ago for dental

offices which had patients who needed bndgework or dentures. Manjarres was arrested soon after the police interview for practicing dentistry without a license.

## **Parents of Autistic Boy Accuse Dentist of Unnecessary Treatments**

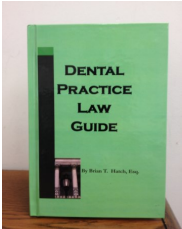
The parents of fifteen year old Ravi Herndon, who is autistic and can't talk, have hired an attorney, along with at least a dozen families in the Minneapolis, Minnesota area, to pursue legal action against pediatric dentist Dr. Deanna Alevizos for overtreating their children. The boy's mother, Harriet Greenlee-Herndon said that Alevizos had been treating her son for several years at Metro Dentalcare in Burnsville, Minnesota, and she spent several thousand dollars each year for filling cavities and sealing molars. She eventually saw another dentist for a second opinion recently after Alevizos had recommended that for "massive decay" he have six cavities filled while under general anesthesia. That dentist said the boy had no cavities

at all. Complaints by other patients of unnecessary treatment by Alevizos, some of which were filed with the state dentistry board, prompted her to seek legal representation. Alevizos issued a detailed statement defending her treatment methods, although she did not comment for privacy reasons on any specific case, and she stated her concerns that the other dentist who provided the second opinion had not conversed with her about the case before providing a conflicting diagnosis. She also said her patient had not discussed the situation with her before bringing the case to a local television station. That television station, WCCO of Minneapolis, contacted the second dentist, who asked that his name not be revealed. Metro Dentalcare has hired a crisis communications firm to help deal with the matter.

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

**Hatch Legal Group**  
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**Suite 403**  
**Attleboro, MA 02703**

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