

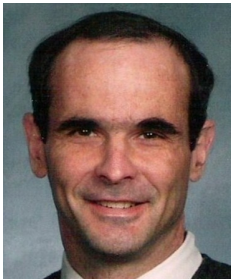
Dental Practice Legal Update

October, 2017

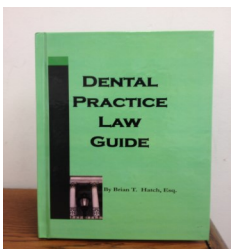
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Competing MA Dental Therapist Bills to Be Reconciled Soon

The contentious battle over what kind of midlevel dental practitioner, or dental therapist, will be able to provide some dental treatment in Massachusetts came to a head in September with a hearing on competing legislation which requires different requirements for supervision by dentists of the new class of dental providers. Senator Harriette Chandler, D-Worcester has sponsored a bill which would allow dental therapists, after completing a certified educational program for licensure and a year of residency or 500 hours of direct supervision of a licensed dentist, to perform certain dental procedures under general supervision under a licensed dentist. The therapists would then need to have a written agreement with a dentist to outline the extent of the allowable treatment they could provide, including interpreting radiographs, placing space maintainers, performing pulpotomies on primary teeth, conducting oral evaluations of and assessing dental disease, drafting individualized treatment plans authorized by a supervising dentist, and performing surgical extractions of permanent teeth. While the Chandler bill would not require the presence of a dentist, a bill introduced by Rep. Peter Kocot and supported by the Massachusetts Dental Society would require direct supervision of a licensed dentist. Rural area legislators are promoting the concept of dental therapists to assist in having dental care available to children and seniors in those areas who may not have access to a dentist.

Effective Lease Negotiation Strategies

Negotiating good lease language is one of the most important parts of buying a practice, and a present tenant should review the lease each time an option to renew is exercised. After all, the expense of rent can easily be 5-10% of the overall budget of a practice. Dental practices have specific needs when looking at lease terms, so be aware of them when discussing this aspect of a purchase, or at the end of the term of the current lease.

Rental rates vary widely according to the location, so it is good to get an estimate from a realtor or look at commercial rents paid for professional office spaces in other parts of the community of the practice site. Rent increase rates based on inflation are often written into the lease, and often the rates can be 3%, so it is good to get a reasonable fixed rate, and not accept language allowing a fixed rate or the market rate, depending on which is greater.

Dental practices are normally good tenants, since practices don't go out of business as often as other commercial tenants, and once the space is built out as a dental practice, practices are usually sold and a new tenant occupies the space without interruption in rental payments. Therefore, use this as leverage in convincing the landlord that the value of a good tenant is worth giving the lessee good terms.

Is there room to expand the practice outside of the existing space? Is that possibility considered in the lease? This is valuable to a prospective buyer who is looking at long-term growth of the practice. If there are other

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Effective Lease Negotiation Strategies (from p.1)

professional spaces available in the building, try to have an exclusivity clause included so another competitive dental practice can't locate in the same building.

There may be a personal guaranty required of the lessee, particularly if there is a new practice or a practice corporation which hasn't been in existence for long. Try to either not have a personal guaranty, or have it limited to the first few years of the lease while the practice is building up a stable patient base.

The provision on assignment and subletting is crucial to prospective selling of the practice, since if there isn't clause requiring at most a landlord consent "not to be unreasonably withheld" it may hold up a sale. A clause allowing more

tenant freedom to assign the lease if it is to another dental practice can add value to the lease and also be agreeable to a landlord looking to continue to have solid continuation of tenants when the time comes for a practice to be sold. Sometimes an unreasonable landlord may demand an exit payment to obtain consent for an assignment.

Lease extension options are important, and for long periods into the future, such as a number of five year options, with the opportunity to renegotiate some of the terms at the end of each option period. Banks often require these kinds of lease extensions before financing long-term loans for practice purchases.

The triple net lease, or tenant payment of a share of taxes, insurance and maintenance is often offered, instead of a gross lease, in which the landlord

pays these expenses, so it is important to require information on what the average increases in these figures have been, and may be in the future. A good term is to require that major or exterior maintenance be taken care of by the landlord, except for perhaps the cost of snow plowing or regular landscaping. Avoid language which may allow for costs which should be borne by other tenants to be included in the maintenance expenses.

For dental practices the provisions on allotted parking spaces and signage are important to insert to ensure that enough convenient parking is available for patients, and that marketing the practice through good signage is allowed by the landlord up to the extent of local ordinances.

A good lease is of great value to a practice seeking to develop a long-term transition plan, so don't accept blindly what the landlord is offering before negotiating something better!

Dental Therapist Bills to be Reconciled Soon (cont. from p.1)

The MDS, which contributed a poll saying that 73 percent of those who responded say they are not comfortable with remote supervision for dental procedures, proposes limiting the therapists' locations to the counties with the biggest shortage of dentists, Berkshire County and Barnstable County. Governor Charlie Baker has submitted a budget proposal promoting dental therapists as a way to have "modest savings" for the MassHealth dental program because of expanded access but having less costly treatment done by dental therapists instead of dentists. The two bills will likely be reconciled this legislative session and a new law enacted in the near future.

Connecticut Dentist Charged Billing \$900K for Services Never Performed

Connecticut Attorney General George Jepsen has announced that a False Claims Act lawsuit has been filed against Dr. Aram Agadjanian of Fairfield for billing out \$900,000 to the state's Medicaid program for procedures never performed. Jepsen's

announcement claimed that Agadjanian, who is also known as Aram Yuri Agadzianov, "engaged in a long term, pervasive scheme to defraud the state's Medicaid program." Agadjanian was a frequent provider for Connecticut's assisted living facilities and it is alleged that he billed for dental services that were never performed, including multi-surface tooth restorations, repairs to dentures and sets of dentures that were never provided. Some of the procedures were conflicting, such as treatment allegedly performed on partial dentures for the same teeth that received cavity fillings. The \$900,000 in services were allegedly billed during the course of just one year, from April, 2014 to April, 2015. Adagjanian's patients were mostly indigent and elderly recipients of Medicaid benefits under the Connecticut Medical Assistance Program.

Orthodontists' Claims Against State to be Heard

A long running suit by the state of Texas against orthodontists and the company overseeing them for Medicaid fraud in performing orthodontic services that were not medically necessary has now resulted in counterclaims by the orthodontists against the state being heard in the Texas Supreme Court. The orthodontists were eventually cleared of any charges of fraud

and now claim that the state committed fraud, negligence and breach of contract because of how it handled prior authorization of Medicaid along with the company administering the procedure billing, Xerox. They claim that the state continuously assured the orthodontists that all their procedures were being reviewed by a Xerox employed licensed orthodontist, when actually only about 10% of claims received that review. Xerox had been found guilty of fraud in a separate case, and brought an action for contribution from the orthodontists which is still pending. The state of Texas has contended that the claims against it were foreclosed by sovereign immunity of the state against counterclaims. The orthodontists' legal argument is that the state shouldn't be able to press claims against a party unless it could be sued on a counterclaim. The case will be heard by the Texas Supreme Court on December 6th.

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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Will Opioid Suits Against Pharmaceutical Companies Expose Their Deception of Dentists?

Public officials in five states are now suing thirteen pharmaceutical companies and doctors representing them for not providing accurate data about the frequency of addiction to the opioids they supply to prescribers such as dentists. The national law firm representing the plaintiffs, Simons Hanley Conroy has said that the actions may be similar to the lawsuits which went on for years against the big tobacco companies because of their misinformation regarding the harmful effects of cigarette smoking. The firm says that the administrative and social costs related to opioid addiction make the public entities valid plaintiffs for the actions for damages. The firm's spokesman, Paul J. Hanly, Jr., Esq. said that physicians, including dentists, who prescribed such opioids as oxycontin and hydrocodone were misled by the pharmaceutical companies when false information concerning addiction was supplied to these prescribers. This

led to prescribing more of the addictive pain relievers than was necessary for the procedures they were performing. The additional supplies were often either sold on the black market to drug users or became the source of addiction of those who were treated.

NJ Dentist With History of Fraud, Sham Transfers, and Unsanitary Office Conditions Retires After Settlement

Dr. Kevin Ward, a New Jersey dentist with a history of malpractice, revocations of his license, sanitation violations of his office, Medicaid fraud and a sham transfer of the ownership of his dental office in order to continue practicing while his license was revoked, has finally retired after the latest Medicaid fraud settlement with the New Jersey Attorney General. In 1986 a child died in Ward's office while under anesthesia, and he was suspended for an error in professional judgment. In 2000, he was accused of breaking a boy's leg and other physical harm to other patients, and his license was suspended. He continued to practice

through a scheme to make a "sham transfer" of the ownership of his practice to Dr. Franz Reck. In 2012 Ward's practice was investigated for having unsanitary conditions, including bedbugs and rusty instruments. These violations were confirmed again to exist in 2016. After a settlement last month for \$90,000 in a Medicaid fraud case, Ward finally retired.

Hatch Legal Group works with South Shore Dental Advisors to provide dental practices with services within a variety of areas, including law, IT, banking, accounting, and practice management. 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 Dreams Pays out \$1.375M to Settle MassHealth Fraud Case

Dental Dreams, LLC, which has numerous dental offices in Massachusetts and 10 other states, has settled a case for MassHealth fraud filed by the Massachusetts Attorney General and the Massachusetts U.S. Attorney on behalf of a whistleblower employee for \$1.375 Million. Ashley Sampaio, a former office manager in Dental Dreams' Fall River, Massachusetts office, said that she witnessed billing practices for fraudulent claims to MassHealth including for services such as fillings and sealants not performed or not compensable and simple extractions billed as complex surgery. Sampaio resigned from Dental Dreams after she felt uncomfortable about the practices and filed the claims under the Massachusetts and federal False Claims Acts. She will be awarded a portion of the settlement as the initiating private party in the suit as well as her attorneys' fees.

Fugitive Dentist Apprehended in Dominican Republic and Returns to Face Charges

Federal marshals apprehended a Michigan dentist who had apparently fled to the Dominican Republic to avoid answering charges for Medicaid fraud, health care fraud and racketeering. 51 year old Dr. David Johnson waived extradition and was returned to Michigan to face arraignment on twenty counts of Medicaid fraud, six counts of health care fraud, and one count of racketeering. The charges were originally filed in May of this year. Johnson was convicted of Medicaid fraud in 2006 and was banned from the Medicaid program but used another doctor's identifying information to bill out \$1.7 million in claims over three years.

Dentists Object to Reporting Imported Lab Products

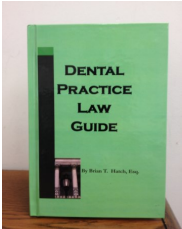
In response to an Erie County, New York legislative proposal to require

dentists and dental labs to disclose the origin of dental lab products which are imported and which may be substandard, the head of the region's dental society says the law is "prejudicial, insulting and misleading" and that it suggests that dentists are intentionally supplying inferior products. Dr. Raymond G. Miller says that the law would create "misguided, unnecessary" regulations that, if at all, should be applied to dental labs and not dentists. The sponsor of the bill, Erie County legislator Joseph Lorigo, said he had received scathing letters from dentists about the bill, but still plans to lobby to have a compromise regulation passed if necessary to protect consumers.

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

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