

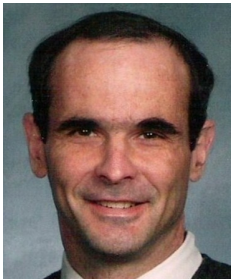
Dental Practice Legal Update

September, 2017

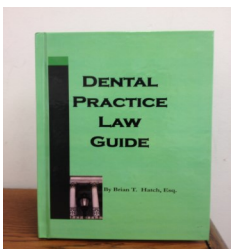
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Federal and State Legislation Targets Board Accountability

After the U.S. Supreme Court ruled in 2014 that the North Carolina Board of Dental Examiners had overstepped its authority when it limited the establishment of non-dentist run tooth whitening businesses, now state legislatures, the courts, and the U.S. Congress have started to take steps to ensure accountability of board regulating authority to legislatures and the courts. The "Restoring Board Immunity Act," co-sponsored in the U.S. Senate by Mike Lee (R-UT), Ted Cruz (R-TX), Ben Sasse (R-NE), and in the House of Representatives by Rep. Darrell Issa (R-CA) would allow state occupational licensing boards immunity from prosecution under federal anti-trust law if their states adopted accountability processes by which they could have their rulings reviewed by citizens and legislatures. Legislatures could establish a review procedure which would give citizens the right to challenge in court regulations to make sure they are required for "public safety." Or, alternatively, states could require more powerful oversight mechanisms by legislatures over board regulations regarding occupational licensing. In Ohio, the legislature is now considering a bill that would require state occupational licensing boards like dental boards to submit to the legislature for review each year a list of criminal offenses they enforce. Citizens in industries with licensing boards could then be aware what actions would actually constitute a criminal offense if board disciplinary action took place.

Avoiding Prosecution for Billing Inaccuracies

When billing insurance for dental procedures, dentists usually rely on competent office staff to perform what is a very important function which, if done incorrectly, can result in monetary penalties, discipline, suspension or even revocation of a license. Remember that either the Board of Registration in Dentistry or the Attorney General's office has the power under M.G.L. Ch. 112 Section 52E to suspend or revoke a license if a dentist is found to have engaged in repeated billing irregularities.

There are numerous types of billing that are included within the definition of fraudulent billing, even if they are errors a dentist is not aware of and not an intentional defrauding of private insurance companies or MassHealth. Here's a partial list of billing methods that have been used and resulted in prosecution.

Diagnosing and performing unnecessary or incorrect treatment has been a problem that comes up in the news frequently, and many of the cases that have come up involve children who undergo multiple unnecessary extractions, restorations or orthodonture because the procedures are covered by Medicaid. Larger corporate practices sometimes push dentists to over diagnose and overtreat just to make quotas or earn production bonuses, and this is a compensation practice which is prone to abuse.

Misrepresenting the dates of service to fulfill insurance company waiting periods or take advantage of early deductible requirements of insurance companies is fraudulent. It

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Avoiding Prosecution for Billing Inaccuracies (from p.1)

is an error which is often not caught by the treating dentist who isn't aware of dates on patient insurance accounts handled by staff.

"Unbundling" services is a common way to increase monies from insurance company reimbursements, which takes place, for example, when each part of more complicated treatment which is normally reimbursed as one procedure is split up into separately reimbursed procedures which can result in higher payments.

Using NPI provider numbers incorrectly is an illegal practice when a dentist who hasn't yet been assigned a Medicaid provider number performs treatment under another dentist's number. Additionally, treatment which is performed by

Are Mass. Dental Schools Making a Positive Impact in Controlling the Opioid Crisis?

Since the Journal of the American Medical Association came out in 2016 with a study concluding that dentists are among the biggest over prescribers of opioids for pain management, the dental industry in Massachusetts has stepped up its efforts to assist Governor Charlie Baker's efforts to curb the opioid abuse crisis. The three Massachusetts dental schools have all included in their curricula training on the correct ways to use medications for pain management without contributing to patients becoming addicted. Governor Baker sits on the President's "Commission Combatting Drug Addiction and the Opioid Crisis" and has been in the forefront of the fight against opioid abuse, with at least some success recently. Opioid related deaths in Massachusetts fell 5% in the first six months of 2017, while other states still are experiencing sharp increases in deaths due to opioid overdoses. Massachusetts has a seven day limit amount of days of opioids which can be prescribed, and a 3 day partial refill can be requested for patients not wanting to have extra opioid pills

hygienists or dental assistants beyond their allowable duties under dental regulations is sometimes billed illegally under dentists' provider numbers to obtain reimbursement.

Using the wrong codes to "upcode" a treatment beyond what is medically necessary or within the actual diagnosis, such as billing for extractions of impacted teeth when actually the extractions are more routine, is fraudulent if more reimbursement is obtained. Recently MassHealth fraud cases have required return of fees for "palliative" or emergency treatment when routine procedures were performed. Billing for evaluation or management services, when the visit is just for a routine follow up appointment can also be a violation.

Dentists might consider that waiving deductibles and/or copayments is doing their patients a favor, but it is actually fraudulent when it overinflates

left over from their treatment which could be used to fuel an addiction or sold illegally. In the dental industry, there has been a movement towards the use of non-opioid alternative pain management techniques, like the use of tramadol, exparel (a long acting anesthetic that is available in smaller doses as of last year), and combinations of Tylenol or ibuprofen to relieve pain after dentistry.

Canada Sued Because of Dental Therapist's Assaults

A lawsuit filed by 12 members of the Nunavut native Indian community in northern Alberta has alleged that the Canadian government has some civil liability for allowing a dental therapist to sexually assault them over a period of years. Daniel Nahogaloak, who died in 2016 at age 63, was trained by the Canadian government as a dental therapist in 1984 as part of a program to improve dental hygiene in the rural northern area of Alberta where the Nunavut community has little access to dentists. He was charged and pleaded guilty to one charge of sexual assault in 1986 and was told to seek counseling for "alcohol and behavioural problems." The victims, who were children at the time in the town of Igloodik, said that he had sexually assaulted them "in various manners" while

expenses that insurance companies might ordinarily not pay for.

To preventing the intentional or unintentional fraudulent billing of a practice from resulting in investigations it is necessary to have staff educated as to what is and what is not legal-and the possible penalties for crossing the line into what is considered fraud. This includes having regular self-audits of billing to pinpoint errors before they become regular practices, not incentivizing staff for production, and having staff well versed in coding terminology and procedures. Having a reputable outside consultant direct or handle the billing process can help also in preventing fraudulent practices from becoming a part of the office routine. Staff errors should be corrected immediately, and well documented so it is clear that the dentist is not part of any intentional fraudulent scheme. Having "repeated irregularities" is when mere errors become serious and fraudulent.

.being associated with an elementary school which sent children to him for appointments. When one of the children complained to the school about Nahogaloak's actions he admitted that he sexually touched nearly all the female patients who came to see him for dental therapy over a period of several months. The attorney for the victims, Alan Regel of Edmonton, said that all of the 12 plaintiffs said they had good dental health before going to the treatments with Nahogaloak, but that the condition of their teeth deteriorated afterward. He said that they all have experienced psychological trauma as a result of the assaults, and now have a fear of seeing dental providers. Nahogaloak also worked in other communities besides the one where the plaintiffs lived, and Regel is seeking to contact other possible complainants. He says that there are complainants against another dental therapist in the program for sexual assault.

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

Mass. AG Announces \$500K Dental Fraud Settlement

Massachusetts Attorney General Maura Healey announced on August 21st that a Springfield, Massachusetts had reached a settlement with her office so that \$500,000 in improperly billed MassHealth reimbursements would be repaid to the state. Dr. Annie Watson of Gentle Smiles, LLC was alleged to have committed dental fraud against MassHealth dental program by billing MassHealth for palliative care (emergency care treatment) when sometimes only cleanings and x-rays were the treatment provided. Watson did not have supporting documentation for the palliative care designation as required by MassHealth, and obtained higher payments allowed by MassHealth for this treatment. The settlement includes the \$500,000 restitution as well as an agreement for Watson and all her employees to become better trained in MassHealth regulations and other laws pertaining to insurance reimbursements at the state and local level. The improper billing was for the period between March 2010 and June 2013.

Dentists Sued for “Bite Mark” Forensics That Jailed Wrong Man for 23 Years

In 1984 two dentists who professed to be experts in forensic dentistry and declared that in their expert opinion the “bite mark analysis” of Robert Stinson was evidence that he had been in contact with a murder victim’s body at around the time of her killing in Wisconsin. Dr. Lowell Johnson, an odontologist, testified that the suspect most likely had been bitten by someone with a missing tooth, and that led detectives to arrest Stinson, who also had a missing tooth (though his right front tooth was missing and Johnson said that the suspect probably had a tooth next to the front tooth missing). Johnson brought in his friend, Dr. Raymond Rawson, to prepare an “expert report,” without examining Stinson, to confirm his conclusions that Stinson was the correct suspect. The prosecution relied chiefly on the two dentists’ opinions to convict Stinson of murder and have him spend the next 23 years in jail. In 2009, after the review of the evidence by four other odontologists, the expert opinions were determined

to have no “empirical or scientific basis” and Stinson’s conviction was vacated. In 2010, Moses Price, a convicted felon whose DNA matched blood found at the scene, pleaded guilty to the crime. Stinson is now suing Johnson and Rawson for fabricating evidence and conspiring with investigating detectives to withhold exculpatory evidence.

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Dentist Accused of Using Hypnosis to Molest Boys During Treatment

An Australian dentist, now 82 years old, is being tried for sexually molesting four boys using hypnosis and relaxation techniques when they were between 8 and 17 years old in the early 1980’s. A school counselor had been molesting one of the boys for about a year before he was referred to the dentist for a toothache. After that boy went to the dentist, he was taken into a back room, and the counselor then-joined them and both men molested him. The dentist said that he used hypnosis and relaxation techniques to aid in pain management. There are 26 charges against him, including having sexual intercourse with the four boys without consent. The prosecutor said that as a part of the trial the jury would hear “tendency” evidence that is alleged to show a “pattern of behavior.” Five other boys not a part of the trial will also be testifying.

Dentist Charged With Treating Patients While Drunk

Dr. Gregory Bellotti had treated eight patients out of the fourteen scheduled for March 23rd at Refresh Dental Management in Mars, Pennsylvania when his staff noticed he was so impaired that they called 911 to report his “altered level of consciousness.” When police arrived Bellotti was confused and could not answer several simple questions. He admitted to police that he drank a bottle of vodka at lunch. After being taken to the hospital, Bellotti was found to have “acute alcohol intoxication” with a blood alcohol level of .481 percent, which is more than five times the legal driving limit. The criminal complaint against Bellotti states that his reckless conduct placed or may have placed his patients in danger of death. Bellotti’s license was suspended by the Board of Dentistry, and he was terminated by the practice employing him.

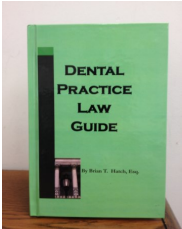
Henry Schein Dental Settles With State of Texas Over Anti-Competition Allegations

The dental supply company Henry Schein Dental has settled a lawsuit by Texas Attorney General Ken Paxton started because of allegations of anti-competitive conduct in its dealings with the Texas dental industry and the Texas Dental Association. Schein, Patterson Dental Company and Benco Dental were accused of working together to discourage distributors and manufacturers from working with the Texas Dental Association. Benco settled its suit in 2015. Schein agreed to pay \$300,000 in penalties and conduct antitrust training for its employees.

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

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