

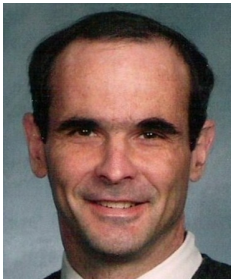
# Dental Practice Legal Update

**April, 2019**

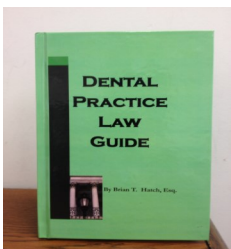
Volume 16 Issue 4

Dental Practice Legal Update is published as a courtesy to the dental practices industry by:

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## **Will Insurers and States Increase Value Based Reimbursements?**

An interesting proposal has come out of a group from Arizona State University called the National Safety Net Advancement Center which would increase reimbursements to dentists by insurers and state Medicaid providers for preventive care. William Riley, a professor of the AZSU College of Healthcare Solutions recently gave an update on his recent efforts to persuade participants from the Arizona Dental Association, public health providers, public insurance payers, dentists, oral health providers, and legislators to get behind the development of a value based structure of reimbursements to dentists. The proposals basically are to have dentists provide children with a standardized binder of five preventive treatments, x-rays, a dental exam, a cleaning, a fluoride treatment and a treatment plan, all done in one visit for an increased reimbursement by insurers or Medicaid. An gum disease exam for adults would be added to the package.

Riley says that by paying higher reimbursements for preventive care, not only will more costly problems caused by lack of that care be reduced, but if done in one visit, more dental chairs for other patients can be freed up. Those other added chairs and visits, if for more lucrative more complex procedures, could theoretically add to the dentist's bottom line.

Would insurers save enough on their costs to make this kind of system

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## **Fulfilling Mandated Reporter Requirements for Child Abuse**

Dentists are mandated reporters of child abuse or neglect under Massachusetts law, so what are the standards that dentists should be aware of when they see possible situations they suspect may involve abuse or neglect? 75% of physical abuse cases involve injuries to the head, neck, and/or mouth, and dentists are in a key position to be the first observers of abuse.

Abuse is defined under Massachusetts law as the non-accidental act by a caretaker which causes a substantial risk of physical or emotional injury or amounts to a sexual offense. The definition of neglect is the failure of a caretaker, either deliberately or through negligence, to take actions necessary to provide an individual with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care.

There are signs that dentists can look for in recognizing child abuse in their patients. If there are lacerations or scars from trauma or rope marks in the corners of the mouth it could be a sign that a gag was forced into the mouth. Sexual abuse can be indicated by unexplained bruises in the palate that may suggest forced oral sex. Missing teeth are a sign of trauma if not for any specific dental reason. Lacerations in tissue between the teeth and upper part of the mouth can be the result of forced feeding or blunt trauma from a hand or instrument. Abusive behavior involving scalding liquids or chemicals can leave burns in the mouth, or can result in a child having

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## **Fulfilling Mandated Reporter Requirements for Child Abuse** (cont. from p. 1)

difficulty swallowing. Excessive salivation can also result from exposure to foreign substances. X-Rays which show a healed or recently fractured tooth not involved in the dental history of the child can provide indications of abuse since the last exam.

Often a difficult part of the dentist's role as a reporter is interviewing the victim without the possible abuser present. The child may be intimidated by questioning about the possible abuse. Asking questions which allow for just a "yes" or "no" answer may make it easier for a child to conceal the true story behind any telltale signs. Asking how the mark, missing tooth, or burn happened may provide a more

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## **Will Insurers and States Accept Increased Value Based Reimbursements?** (continued from page 1)

make sense business-wise? That is a judgment for their economic analysts to decide, as with any increase in reimbursement rates.

But with the public sector leaning toward favoring treatment of more underserved people, especially children, with better preventive care to avoid more costly treatment later, the proposal could be viewed positively by legislators and public insurers seeking to reduce overall health care costs and make systems more efficient.

Other states are weighing the impact of *not* raising reimbursement rates for dentists on the quality of care in litigation. Dentists in Washington state are suing Delta Dental over their lack of transparency and disregard for quality of care in making reimbursement decisions. Decisions on lower reimbursements on costly procedures are often made after treatment and are shocking patients and dentists when learning

understandable descriptive response. These responses may give hints which prompt the need to question a parent or guardian separately.

The parent or guardian accompanying the child may or may not be the abuser, so the initial conversation should not be accusatory but just state concerns based on objective observations. These adults should be interviewed separately from the child, but may volunteer more helpful information if they are not the source of the abuse. If there are obvious conflicts in the stories of the parent or guardian and the child, red flags may be raised which warrant further reporting to authorities.

Dental neglect is defined by the American Academy of Pediatric Dentistry as the "willful failure of a parent or guardian, despite adequate access to care, to seek and follow through with treatment necessary to ensure a level of

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of the lack of coverage for specific procedures in insurance plans. Legislation in Vermont is under consideration that proposes to increase maximum reimbursement rates in public insurance sets up working groups including the Board of Dental Examiners and the Vermont Dental Association to look at quality of care under the present low reimbursement rates.

## **Mass. Division of Insurance Making Decisions on Delta Plans After Final Hearing**

After a second public hearing on March 8, 2019, the new Delta Dental of Massachusetts plan to lower reimbursement rates under the Delta Premier Dental Plan will now be considered for final approval by the Massachusetts Division of Insurance. Much of the meeting was centered around an analysis requested by the DOI from Delta regarding the proposal's actual effect on revenue and the bottom line of dentists margin of profit in the state. Delta has proposed a roughly 10% cut in reimbursements from the Delta Premier dental plan, which is a more extensive plan than its PPO plans and has higher dentist reimbursements. Delta drew its conclusions that the change would not have as much of an effect on dentists' bottom line as feared because it said that only 22.9% of dentists' revenue comes

oral health essential for adequate function and freedom from pain and infection." The difficulty in this area involves weighing factors which may not be intentional neglect, such as lack of finances, transportation difficulty, parental ignorance or inability to understand the value of oral health. If a child is at risk of harm because of lack of dental care, even though there aren't these kinds of problems, then the parent must be made to understand the seriousness of the situation.

An abuse or neglect oral report can be filed in Massachusetts with the Child-at-Risk hotline (800-792-5200) at the Department of Children and Families. A written report must follow within 48 hours. Child abuse recognition and reporting by dentists is a subject that is dealt with by the Massachusetts Dental Society Access, Prevention and Interprofessional Relations Committee. They are able provide further information regarding dentists' obligations as mandated reporters.

from Delta. Dentists in the audience as well as Marc Rosen, a Massachusetts dental CPA, said these calculations did not consider a number of factors which would make that figure anywhere from 20-50%. Several dentists said that they would be impacted enough by the changes, which do not guarantee that reimbursements will keep up with inflation, that their practices, including quality of care, would suffer a great deal. The Massachusetts Dental Society endorsed the changes as something that was inevitable even though not welcomed by dentists. A spokesperson for the Massachusetts Dental Alliance, which is becoming a new force to represent dentists' interests on a state-wide level, Jill Tanzi, DDS, said after the meeting that she was still optimistic that after the testimony, the Mass. DOI would make a decision that is right for dentists and patients.

***Provide your employees required HIPAA training with an on-site presentation and manuals for employees and Privacy Officers. 508-222-6400***

***Attorney Brian Hatch has been practicing law for over 33 years and has focused on the dental industry since 1995.***

## **Professor Forced Students to Write Daughter's Thesis for Entrance to Dental School**

Around the same time as scandals in the U.S. revealed payoffs by wealthy families to get their children admitted to well-known colleges, it was revealed that a South Korean professor forced his graduate students to write a thesis for his daughter which helped her be admitted to an elite dental school. The professor at Seoul's Sungkyunkwan University told her graduate students to conduct a three month long experiment, fabricate some of the results and then write a thesis which was published under her daughter's name in an academic journal. The daughter then submitted the thesis as part of her application to the Seoul National University's dental school, the top dental school in the country. She gained admittance last year. The education ministry is investigating the matter to see what laws were broken. One of the graduate students said that she was forced to do 54 hours of volunteer work on the thesis, and was paid about \$440.

Other recent scandals involving the South Korean education system include falsification of records by Education Minister Yoo Eun-hae to get his daughter admitted to a well regarded junior school.

## **Hygienist Sues for Retaliation After Reporting HIPAA Violations with Camera Use**

A dental hygienist who was concerned that cameras that had been placed in the practice she worked at were recording patients in violation of HIPAA regulations is suing for retaliation after complaining to the office manager. Karen Ullom, who worked as a hygienist at the West Virginia dental practice of New Martinsville Dental said that the office manager, Adam Pendleton, showed her the cameras which had been installed in the front area of the office, and told her he planned to install more throughout the practice, including in operatories. Pendleton claimed the cameras were necessary to keep track of patient flow, to prevent lawsuits and to assist in staffing decisions. Ullom also is suing for age discrimination and race discrimination.

## **Illinois Dentist Files Suit for \$65K Over Misclassification as an Independent Contractor**

An Illinois dentist has filed suit against a dental practice for violations of state wage laws and breach of contract. The dentist's suit against Bright Dental Care, P.C. d/b/a Smile Dental Care alleges he is owed over \$65,000 plus 45% of his collections at the practice for the violations. The suit over misclassification of independent contractor status is one of numerous cases across the country in various fields by individuals, sometimes in coordination with state enforcement agencies, to collect monies not paid to workers who should have been classified as employees rather than independent contractors. Dental practice owners often make that mistake to save money on taxes, not realizing that state laws often prevent general dentists from being classified as independent contractors.

***Brian T. Hatch Esq. is an experienced provider of legal services for dental practice purchasers and sellers.***

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## **Kentucky Dental School Whistleblower Claims Theft of Gold Crowns, Mismanagement**

A former University of Kentucky Dental School Dean, who had been involved in a well publicized suit over his firing of a professor for his criticism of the Kentucky governor's policies, is now suing the school after he was terminated.. Stephanos Kyrkanides was fired after the \$620,000 settlement with the outspoken professor. Now Kyrkanides has become a whistleblower against the school, alleging that he was retaliated against for complaining about college employees stealing gold crowns to sell them or convert them to gold coins. He also said that UK lost almost \$2 million because clinical faculty were being paid salary supplements based on gross rather than net revenue. He also alleges retaliation because of his support of a group of minority students alleging discrimination.

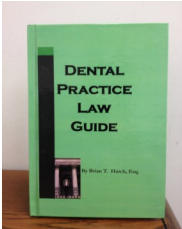
## **Will Dentists' Opinions Enter Discussions on Rules on Vaping and Marijuana?**

The legal maneuvering over the extent to which now legal usage of marijuana and vaping are going to be regulated may allow dentists and other professionals room to voice their opinions on the effects on oral health of both activities. Spokespersons from the Canadian Dental Association (CDA) and Canadian Dental Hygienists Association (CDHA) have offered their opinions on how smoking cannabis or vaping can affect oral health. Associate Director of Clinical Affairs at the CDA, Dr. Aaron Burry said that there is an increase in the risk of periodontal and gum disease when smoking cannabis. If smoking cannabis is combined with tobacco, it doubles the carcinogens the mouth is exposed to. Melanie Martin, Director of Dental Hygiene Practice with the CDHA, says that cannabis can also increase the potential

bleeding during oral surgery or treatment. Burry said hat the "jury is still out" on long term effects of vaping, since research is still in beginning stages about unknown health effects of vaping on the lungs, the heart and the teeth and gums. He warned that chemicals inhaled through vaping are not necessarily neutral compounds and thus may have a long term adverse effect on oral tissues. Towns and cities in Massachusetts are now in the midst of deciding how to regulate marijuana facilities and the exposure of young people to increased recreational use of marijuana. Legislators at the state and local level are now considering rules to prevent the rampant spread of vaping among school age children, which is now seen as a common practice at or near schools. Martin says that patients should be upfront about their marijuana usage and vaping with their dentists and hygienists so they can be well informed about effects on oral health. Legislators will also likely raise these issues when formulating regulations.

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