

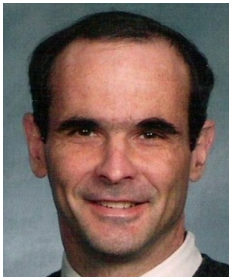
Dental Practice Legal Update

August, 2019

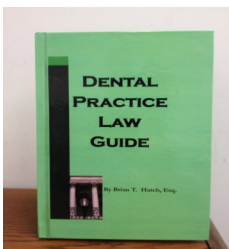
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US House Joins MA Bill to Prevent Fee Setting for Non Covered Services

More legislation action seems imminent on the issue of insurance companies setting fees for non covered services when the Dental and Optometric Access (DOC Access) Act was introduced in the U.S. House of Representatives by Rep. David Loebsack (D-IA). Seven cosponsors signed onto the bipartisan bill and 105 U.S. House Democrats and Republicans expressed support for the legislation that would eliminate an insurance company practice of being able to mandate fees on doctors and dentists and their patients for services not covered by their insurance plans. The lawmakers expressed concerns that these plans resulted in higher prices and less access to care. While efforts in 42 states are underway to restrict this kind of practices, approximately one-third of plans are regulated at the federal level and would also be affected by this bill. The American Dental Association lobbied for the passage of the bill. A similar bill has been introduced in the Massachusetts legislature by Sen. Harriett Chandler, Rep. Kevin Honan and Rep. Steven Ultrino and passed the Committee stage and may pass in the near future. The Massachusetts Dental Society has been advocating for this bill, House 1005, which is called An Act Relative o Financial Services Contracts for Dental Benefits Corporations. The American Optometric Association is also behind the federal legislation, and called the current policies "anti-doctor" and "anti-patient."

Can a Dentist Who Gets a Bad On-Line Review Sue the Reviewer?

An bad on-line review through an organization such as Yelp or one of the companies that accepts reviews of professionals can definitely impact negatively a dentist's practice for a long time. Many potential patients turn to on-line reviews before they make an appointment, even if another patient they know recommends the dentist. The negative review can stay there for years and the practice profile and dentist's reputation suffer as a result. Can you sue the patient who made the bad review, especially if it is untrue?

There is a first amendment right to express an opinion negatively about a professional, and many courts have upheld negative reviewers' rights to free speech when challenged in court by a professional seeking damages for the impact on his or her business. But there is also a cause of action of defamation or libel which can allow damages to a dentist whose reputation in the community was harmed by an untrue statement. That's where the fine line exists-was the statement untrue or possibly just an opinion? If the patient declares facts about overcharging or poor handling of insurance claims, then they can have a good defense that the post was factual and protected. If it was just a bad opinion about the results of treatment they received, then that is also protected. But if there are falsehoods underlying that opinion there could be a claim for defamation, if the untrue statements harm the dentist's reputation.

In the last few years on-line review

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Can a Dentist Who Gets a Bad On-Line Review Sue the Reviewer? (cont. from p. 1)

services have become more accommodating to businesses such as dental practices who are able to prove that a reviewer is spreading false information. Some companies, even though they protect the free speech rights of reviewers vigorously, will consider taking down an unjustified negative review that relies on false facts. They may have a policy allowing them to take down such reviews.

But can you go after a patient in court who spreads these unjustified poor reviews? The patient may mount a very effective defense that this is a Strategic Lawsuit Against Public Participation (SLAPP), which penalizes plaintiffs who try to intimidate citizens for

exercising their rights to free speech. It also may be very difficult to go after the patient if you can't pinpoint exactly who it is, since Yelp and many companies which feature on-line reviews protect the anonymity of their reviewers. And what about the increased exposure of a lawsuit against a patient for an on-line review if it also has a similarly negative impact on patients? After all, who wants to go to a dentist who sues his patients for statements about poor treatment?

Some dentists have tried imaginative ways of preventing poor on-line reviews from being published in the first place, like having new patients sign agreements not to disparage or defame the dentist in the future. One dentist in New York even went so far as to require that they be given copyrights to any future on-line reviews so they could be removed or the patient could be sued if they weren't removed.

These contracts are unenforceable and may even subject these dentists to liability.

Non-court options may seem like an alternative for dentists, like rebutting the poor review on-line. But then there are HIPAA restrictions against revealing patient information publicly that prevent, many courts say, from telling their side of the story about why the treatment wasn't actually bad. One of the better ways to avoid a lawsuit, and eliminate the poor review also, is to try to determine who the patient is, contact them, and work the situation out with them so they are willing to take the poor review down voluntarily.

One of the most frustrating situations a dentist can face is when a patient posts a poor unjustified review which has a long-term negative impact on the practice and its reputation. A dentist should weigh the alternatives, both in court and out-of-court with all these ideas in mind before proceeding.

Calls for Restriction on High Interest Dental Credit Cards

A practice which is common with patients who see a dentist for emergency procedures is to offer them a credit card to sign up for to pay for the treatment if they cannot afford to pay up front or may not have insurance enough to cover the procedures. A California state senator has introduced a bill which would prevent providers from offering high interest credit cards in high-pressure situations to vulnerable patients. Often the cards come with interest free short introductory periods, but when the balance isn't paid off in full at the end of the period, high interest rates, often 28% or more start accumulating. Very often in California the provider doesn't even check with the state dental insurance provider, Denti-Cal, to see if the procedure is covered, says the state senator introducing the bill, Holly Mitchell. She has teamed with Jen Flory from the Western Center on Law & Poverty to promote the bill publicly. They say that while a certain amount of third party

financing should be allowed to be offered by providers to patients who cannot afford their procedures, the credit cards that contain a deferred interest provision would affect disproportionately those with lower income levels and poor credit scores. They are against marketing these "subprime" cards to vulnerable populations who sometimes are under pressure because of immediate dental problems to succumb to credit card offers by providers.

Rules Preventing Regulation of Unlicensed Dentistry Promote Substandard Treatment

Statutes which do not allow the Dental Council in Trinidad & Tobago to discipline or regulate unlicensed dentists are hampering efforts to prevent the spread of unlicensed dentists treating patients without oversight and often providing substandard treatment. Dental Council president Dr. Dharmendra Rohit says that his agency's hands are tied because the unlicensed dentists are "untouchable" since they are without the jurisdictional authority over dentists in the private sector. Registered dentists fall under their regulations, but foreign dentists and others who may be unlicensed often get away with providing services and only when a complaint by a patient for misconduct has been submitted to the police can the Dental Council get involved. Dentists

say that that Venezuelan dentists who are not regulated by the state are becoming more and more frequent and putting patients at risk in cases involving HIV and infection control and the use of unsterilized instruments. Often there is no knowledge of whether the foreign dentists still hold a valid license in their home country or if they have malpractice actions there.

"Vexatious" Dentist Ordered to Get Approval Before Filing Lawsuits

A British Columbia dentist, Andrew Nicholas Hockhold, who was termed by a court as a "vexatious litigant" in 2017 for filing numerous lawsuits has been ordered to seek judicial approval before filing new cases. He has filed suit against his ex-wife on a number of cases involving "high conflict" litigation since 2009, mostly involving child support and custody arrangements. He was sentenced to 10 days in jail in 2018 after breaching several court orders and being cited for contempt of court. He has recently filed suit against three judges, the Attorneys General of British Columbia and Canada in 2019. One judge reported to police his concerns about the safety of another judge who was hearing the divorce trial of Hockhold. He is under investigation for using an improper tax haven to fund political activities.

Dentist Fined for Firing Dental Assistant for Texting

Many dental practices have policies restricting text messaging during work hours. Just like making personal phone calls or searching the internet on work time, text messaging, while a widespread habit these days, is considered a distraction from work duties. However, a British Columbia dentist was fined by the Director of the British Columbia Employment Standards agency that ruled that a firing of a dental assistant for texting under a table during a meeting was not “just cause” for firing her, despite previous warnings about her texting habits. Employers in British Columbia must have “just cause” to terminate an employee immediately without notice and compensation according to their length of service. Paula Winsor-Lee, DMD of the Monashee Dental Centre fired Mieka Mandalari for violating a policy restricting disruptive text messaging and for failure to be a team player and lack of respect. Winsor-Lee was fined \$5,446 for violating the Canadian Employment Standards and required to compensate Mandalari for her services.

Disabled Dentist Deemed Not Qualified to Practice

A dentist in Sumatra, Romi Syopfa Isamael, served as a contract dentist since 2015 at a community health center when she started to feel weakness in her legs following a Caesarian section she underwent during the delivery of her second child in 2015. She was able to return to her job after three months of treatment and started using a wheelchair. Isamael applied for a civil servant position as a dentist at a nearby facility. The officials reviewing her application did not forward it to the National Civil Service Agency even though she had passed the written test because they said they could not fulfill all the physical requirements of the position because of her disability. Protests by a number of activists supported her in efforts to reverse the denial, and the Indonesian Dentist Association wrote a letter to the regent responsible for decision saying that the disability would not interfere with her work as a dentist. The Dentist Association also met with the regent and complained that the government must respect the fact that those

qualified individuals with a disability must be respected and protected by the state.

Woman Awarded \$100,000 in Psychological Damages after Tongue Split During Surgery

Malread Molly O’Brien of Thurles, Ireland has been awarded \$100,000 in damages after a judge that psychological injuries from a negligent surgery in which her tongue was split open were extensive enough to cause her not only present but future harm. She said she had experienced excruciating pain immediately after the procedure during which a dental instrument, probably a polishing dish, touched her tongue and caused a great deal of bleeding. She still has lingering effects, including a small patch of nerve damage and a burning sensation. O’Brien said that even kissing would be an “unpleasant experience” because of the ongoing symptoms.

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

Complaints About For-Profit Dental Academies Result in Enforcement Problems

The Texas Workforce Commission is designated as the state agency responsible for oversight of for-profit schools and training centers in the health care and other industries, including dental academies for dental assistants and dental technicians. Complaints to the Commission by students at the Eastex Dental Academy in Longview Texas detailed practices such as requesting that students hand out flyers at a local mall and represent them at a school district job fair. Students said that Eastex postponed the start of courses in August 2017 to see if more students would enroll. When Eastex was investigated, it closed up operations in early 2018, but then reopened later under a different name, Premier Dental Academy. Eastex is now being sued by American Express for \$37,000. The Texas Workforce Commission was found to have rarely enforced penalties

regarding complaints about dental training schools and other trade center schools, however, and it had not reported any closures of career schools since 2009, although that agency claimed numerous closures and appropriate enforcement. An investigation by The Texas Monitor revealed both the number of complaints and the inadequate oversight, and that publication is now publishing more articles on the profits obtained by owners of for-profit schools.

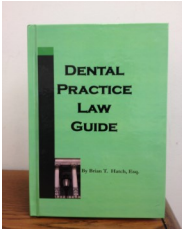
Theft of Companies Arrest Threatened After Dispute Over Non-Covered Charge

When Laveesa Lessey took her three year old son to have fillings done at the Clinique Dentaire Ville-Marie in Centre-Sud, Quebec she thought she agreed to pay for amalgam fillings, which are covered on the general public insurance plan. When the dentist installed composite fillings which aren’t covered by the plan and requested that she pay \$198 for the treatment she

refused to pay, citing that it was a “substantial” charge for a single mother of two on welfare to pay. The dentist called Montreal police and accused her of “theft of companies” because of the non-payment. The police arrived and threatened to have Lessey arrested for the crime. She paid the charge and was not arrested, but complained to the Centre for Analysis of Race Relations (CRARR) because of racial profiling. The “theft of companies” crime doesn’t exist in Canada though it does in the United States. CRARR helped her file complaints with the Montreal police ethics commission, stating that the policeman displayed an ignorance of the law that was not professional. The managing director of CRARR, Fo Niemi said that “The dentist mentioned that she was committing ‘theft of companies’ and the police officer simply ran with it without realizing that no such legal offence exists right here.” The dental office would not comment on the situation, citing patient confidentiality laws.

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