

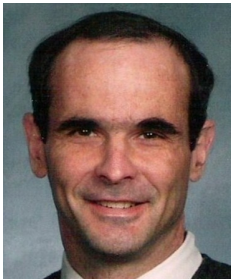
Dental Practice Legal Update

January, 2020

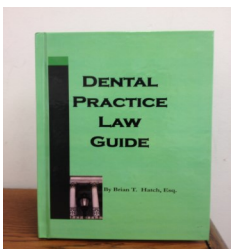
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ADA Calls for Total Ban on Non-FDA Approved Vaping Products

The American Dental Association has called for a total ban on vaping products that are not approved by the Food and Drug Administration for tobacco cessation purchases and approved by prescription. The ADA's interim policy states that it will "urgently advocate" for regulatory, legislative and legal actions at the state and federal levels to ban vaping products sale and distribution. In the second part of the policy the ADA states that it will advocate for research funding to examine the safety and effectiveness of e-cigarettes and vaping products and their effect on the oral cavity. ADA President Chad Gehani, DDS said that protection of the health and safety of patients is a primary concern and that protecting consumers from potentially harmful products was essential while the scientific studies were undertaken. The policy is similar to recent actions by the American Medical Association. The ADA has previously advocated for research into tobacco and non-tobacco nicotine delivery systems as part of its programs regarding tobacco use prevention, research and regulation. The ADA House of Delegates approved the use of the word "vaping" to language on nicotine delivery systems. A number of states have put restrictions on vaping products, including the ban in Massachusetts on vaping products and potentially other flavored tobacco products which are shown to both possibly have harmful effects and appeal to young people.

What to Look for In Making an Insurance Provider Agreement

With legal actions pending against large insurers such as Delta Dental, dentists should be concerned about the insurance provider agreements they are required to sign to participate as a network provider or process claims. Several different areas should be looked at carefully in deciding to sign an agreement to be a provider for a dental insurance company.

What services will be covered? Will the agreement cover all the types of services the dentist usually offers, or will it require the dentist to provide services which are not normally part of the practice?

The payment for services may only cover what is a "necessary" dental service. If the service is part of a medical plan of treatment it may more often than not be covered, whereas some restorative services, or particularly cosmetic services will not be covered, or will only have limited coverage. Also, preventive dentistry such as cleanings or regular treatment can be included as part of covered services since it many times can save the insurance company money in the long run. It is important to find out who determines what is a necessary service, the dentist or the company, and perhaps even a non-dentist, and what rights the patient has to appeal a particular decision as to coverage.

Of course, the payment system the insurance company provides is an essential part of any analysis of which company is right for the particular practice, its overall financial status, and its cash flow. The decision as what is usual, customary and reasonable must be

(continued on page 2)

What to Look for in Making an Insurance Provider

Agreement (from p. 1)

clarified, and the standards used, such as providing a fee range within a certain geographical area or using both general dentists' fees and specialists' fees, must be clarified. Under some plans the patient bears the ultimate responsibility for reimbursing the dentist once the insurance payments are made to the patient, while in others the dentist is paid directly. When these payments are made (some states have laws requiring a minimum insurance payment period), when the payment figure is fixed, and what is the action the dentist must take to recoup unpaid fees should be considered.

Patient referrals are a tricky area which should be analyzed thoroughly, for sometimes out of net-

work referrals are not allowed, or the company makes a decision as to whether the dentist should be reimbursed by particular specialists for particular services.

As in most contracts, a dispute resolution provision is always inserted. At issue is whether the company has internal, fair procedures for dispute resolution, whether the agreement requires nonbinding mediation or binding arbitration methods, who makes the decision resolving the dispute, and what rights the dentist has to appeal the decision. Also, with regards to litigation, this provision may make note of who pays court costs and attorneys' fees should a dispute or malpractice action take place.

Privacy laws are always a part of any agreements that are signed, for HIPAA sets standards on the flow of medical information electronically to insurers, what kinds of information can

be forwarded, and who can forward that information. It can be disputed as to whether it is within the rights of insurance companies to review records of non-network patients. But insurance companies can review records pertaining to its members.

Insurance companies often require a process of auditing of procedures and companies such as Delta Dental are being accused of abusing this system with demands for repayment of fees it had previously agreed to cover. Overstepping their contractual rights with audits can be grounds for legal disputes

Generally, insurance provider agreements can allow for a regular flow of business not otherwise coming into the practice if only private fee for service arrangements are made with patients, but analyzing the agreement, and using an attorney before finalizing the contract is essential to using them effectively.

Mississippi Dentist Files Class-Action Lawsuit Against Delta Dental for Conspiracy to Lower Compensation

A Mississippi dentist, Dr. William Dickey, has filed a lawsuit in federal court against Delta Dental alleging price-fixing and conspiracy to lower compensation to dentists. The suit follows last month's filing of a federal antitrust suit in Illinois against Delta Dental and its state entities by the American Dental Association, a New York dental practice and Dr. Janis Moriarty, President of the Massachusetts Dental Society. The lawsuit which is seeking class action status on behalf of a number of Mississippi dentists requests an unspecified amount of damages and that Delta be prevented from restricting areas where dental insurance plans may compete, as well as a prohibition against retaliation against dentists involved in the suit. The Mississippi Dental Association (MDA) has weighed in on the facts underlying the suit, saying there are "multiple examples where both public and private third party payors ratchet down their compensation to the point dental practices cannot afford to treat patients." The

lawsuit cites American Dental Association research that shows that dentists' inflation adjusted net income has decreased from 2001-2018, in large part due to the anti-competitive actions of Delta Dental. Delta Dental has over 80 million members in the United States and has a network involving three out of every four dentists. Dickey, who practices in Brandon, Mississippi, said in the lawsuit that the standardized provider contracts offered to dentists do not allow for negotiation and are offered on a "take it or leave it" basis.

CT Dentist Ordered to Pay \$1.7M for Exploiting Assisted Living Patients

After a seven day trial a Connecticut Superior Court judge has ordered Dr. Aram Agadjanian, also known as Aram Yuri Agadzanov, of Fairfield, Connecticut to pay \$1.7M in damages for violations of the state False Claims Act. The case was initiated under former Attorney General George Jepson, and under the present attorney General William Tong it became the first case prosecuted under that Act to go all the way to a verdict. Investigators found that Agadjanian visited numerous assisted living facilities to treat patients whose treatment was being funded by the state's Medicaid program for low income or handicapped residents. After the visits he

charged the program for hundreds of thousands of dollars for treatments that were never performed or were unnecessary. Judge Peck gave him the maximum penalty because, according to Tong, he "victimized a population of handicapped individuals and failed to take responsibility for his wrongdoing." Peck found in her ruling that in addition to presenting claims for work never completed, Agadjanian falsified records to supposedly support the claims. The period investigated was from May 2014 to May 2015, and his ability to accept Medicaid patients was suspended in 2015. Agadjanian's license to practice dentistry remains active, although the Department of Public Health could still discipline him or suspend or revoke his dental license. State Department of Social Services Commissioner Deidre S. Gifford called this a "particularly disturbing example of an individual found to have violated the trust of his patients and our public health coverage program."

Employment Manuals, customized for the dental industry and your office, are available from Hatch Legal Group. brianhatch@hatchlawoffices.com

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Class Action Filed Against Dentist Whose Patients Needed Disease Testing

Knoxville, Tennessee dentist Clarence “Buzz” Naber was investigated by the Tennessee Board of Dentistry for complaints initiated by a hygienist in his practice, “Buzz Nabers Dental Studio,” about his failure to use sterilized equipment for a period during 2018. After he was fined \$11,000 and his license put on probation by the Board, Nabers was required to send letters to all patients he treated from September, 2016 to September of 2019 recommending that they be tested for HIV, hepatitis B and hepatitis C due to poor sterilization procedures in his practice during a four month period in 2018. Among the violations included reusing disposable dental handpieces and wiping down dental tools instead of properly sanitizing them. He was also cited for forging certification documents and having dental assistants perform work such as placing permanent crowns and filling cavities beyond their professional licenses. He is being sued by the affected patients as well as the terminated hygienist,

Michigan Doubles Bonuses for Dentists Practicing in State Hospitals and Prisons

The state of Michigan Civil Service Commission has voted to double the bonuses new dentists receive for completing a one year probationary period providing treatment in state hospitals and prisons. The bonus was increased from \$5,000 to \$10,000 as a result. The program was set up to try to attract dentists from devoting their career completely to the more lucrative private sector. Most of the 15 available positions for dentists that the state has currently listed are for providers in the state prison system. The positions currently pay between \$38 and \$60 per hour. The need for dentists to at least begin their career in the public sector prompted the action, which parallels actions in other states for loan forgiveness for similar public sector work or work in underserved areas.

Attorney Brian T. Hatch has practiced law in Massachusetts since 1985 and has concentrated on the dental industry for 25 years.

Proposed Virginia Law Would Regulate Teledentistry

A bill has been filed in the Virginia legislature which would formally define the practice of teledentistry, specify regulations and require oversight of a burgeoning and industry. The sponsor of the bill, Rep. Patrick Hope, said that the lack of a teledentistry statute has allowed dentistry to be practiced by mail without the patient seeing a dentist in person. Making sure all patients receive proper care is a goal of the legislation. Protections for patients in the areas of privacy, informed consent and other legal protections would be included in the bill. The major force in teledentistry, the remote orthodontics aligner company SmileDirect Club, has filed lawsuits in every case where these kinds of restrictions have been imposed. Dental Boards have also been sued by SmileDirect for their teledentistry regulations.

Attorney Brian Hatch Assists Clients in the Dental Practice Purchase and Sale Process from Valuations to Letters of Intent to Drafting and Review of Documents Necessary to Complete the Sale.

Dentist’s License Suspended for Abandonment After Claim He Was Hiding from Family

A Cherry Creek, Colorado dentist has had his license to practice dentistry suspended for abandoning his patients and closing his office. A news organization was contacted by someone claiming to be Dr. Douglas Sewell, the dentist accused of abandonment, stating that he had to “go into hiding” to protect himself from people in his family who he believes are connected to the murder of his older brother in 2014. An investigative section of a television station in Denver, Colorado, Contact7, found that Sewell’s older brother died in 2014 after a \$32 million dollar whistleblower lawsuit against a Florida insurance company. In October of last year patients complained to the Dental Board that Sewell had closed his office without notifying them. As a result

the Dental Board accused him of patient abandonment and failing to supply his patients their dental records. Sewell had been named as a “5280 Top Dentist” at one time. He has not responded to further requests for additional information.

Dentist Charged with Arson After Pleading Guilty to Medicaid Fraud

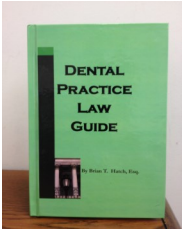
Missouri dentist Thomas Alms is now facing charges of arson after it was alleged that he and his wife set fire to his dental office to collect money on insurance policies. About a week after Alms pleaded guilty to Medicaid fraud because of submitting charges for procedures not performed, he allegedly conspired with his wife to commit the insurance fraud. Alms has voluntarily surrendered his dental license in order to avoid formal disciplinary proceedings before the Missouri Dental Board.

House Passes Bill to Let Medicare Cover Dental Services

In December, the U.S. House of representatives passed a bill, H.R. 3, which includes provisions to allow Medicare to cover 80% of preventive and screening dental procedures, including oral exams, cleanings, extractions and tooth restoration. More complex treatments would require patients to pay a larger percentage of the costs. The program would begin to cover those services in 2025. That bill also provides for coverage of hearing and vision treatment. University of Florida College of Dentistry professor Scott Tomar has expressed approval for the proposal, stating that more people are now turning 65 with most of their teeth still in their mouth, and that further oral health problems need to be prevented for this group of patients, particularly in low income groups.

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