

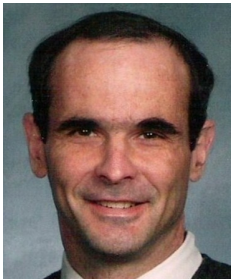
# Dental Practice Legal Update

**July, 2018**

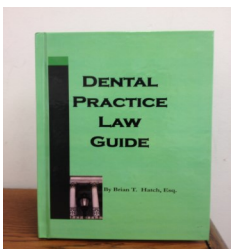
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**Attorney Brian Hatch, publisher of Dental Practice Legal Update, has represented dental practices in business, employment, complex litigation and other legal matters. His latest book is "Dental Practice Law Guide" hatchlegalgroup.com**



## **Kentucky Governor Suspends Dental Benefits After Work Rule Invalidated**

The day after U.S. District Court Judge James Boasberg invalidated the rule established by the administration of Kentucky Governor Matt Bevin for work requirements for some residents to receive Medicaid benefits, Bevin abruptly suspended all dental and vision benefits for 460,000 Kentucky Medicaid recipients. The confusion resulting from the suspension left many dentists with patients arriving for scheduled appointments not knowing whether there would be any benefits to cover treatment. Those patients were turned away and would not be rescheduled until any resolution of the standoff which may take place between the Governor's office, the U.S. Center for Medicare and Medicaid Services (CMS), and the courts over whether those benefits will cease to exist. Bevin's administration said that the ruling eliminated a "legal mechanism" under the new Kentucky HEALTH law which would have allowed benefits to continue if able-bodied individuals who are not working earned points though volunteer work toward purchasing these services with a "My Rewards" account. Three justice organizations, The National Health Program, the Kentucky Equal Justice Center and the Southern Poverty Law Center have sent a letter to CMS requesting that the action by the Governor be invalidated because it did not allow time for public comment and other required processes.

## **Before You Sign a Contract, Look Out!**

Review of the details of important contracts is usually left to the attorneys of the parties, and dental contracts are often complex enough to merit an attorney's attention. But every day dental practice owners or employees sign contracts which may require signatures immediately or are for more minor subjects not requiring examination by legal counsel. There are some important items which stand out which should be recognized when signing agreements.

Most dental practices are set up to protect the owners from individual liability, either as professional limited liability companies or corporations. This protection can be lost, however, if a contract is signed as an individual and not as representing a corporate entity. Try to make sure the title of the owner and the name of the company appear under the signature line to ensure that if challenged, the liability falls on the individual only as representative of a company separate from the individual and his or her personal assets. Many entities such as banks have separate guarantor documents or clauses, or have separate lines for signing "individually," so be aware of that responsibility when signing in this way.

Sometimes there are blank spaces left on documents, supposedly which will be filled in with "minor" details. Those spaces can always be crossed out before signing if necessary. Additionally, it is common practice to require initialing each page of the document, so it can't be altered in the middle of the document after it is signed on the final signature page.

(continued on page 2)

## **Before You Sign a Contract, Watch Out!** (cont. from p. 1)

One of the most important provisions of dental equipment contracts, either for sale or for lease, is the warranty clause, either for a stated period, or, if used, stated to be "as is." An implied "fit for ordinary usage" may apply with many products and may be enforceable, but it is a good idea to look at this provision in contracts for items which could break down soon after purchase. Often this provision is accompanied by language allowing for repairs in certain cases.

Oral contracts are enforceable if there is an offer, an acceptance and consideration or value exchanged. Get agreements in writing to prevent the requirement of providing proof of what the actual intent of the parties was in mak-

king the contract. To prevent added oral agreements from being added to written contractual language, a clause stating the written contract is the entire agreement, or a "merger" or "integration" is important.

Watch out for indemnification provisions, which obligate one or both parties to liabilities for actions of third parties or for actions of the other party to the contract. There sometimes are waivers of liability clauses written into agreements as well which can be important in proving that one or the other party is liable for certain past or future actions.

Always keep a signed copy of the contract, no matter how simple the agreement is, since it can always be referred when questions involving differing interpretations of the agreement arise. In many important agreements, two separate originals are provided for each party to

provide proof that signatures are originals and not copied from some other document.

Witnesses to the signatures of the parties are often required for documents, since they can provide proof that the party actually signed the agreement on a particular date. Independent notaries are sometimes used since they must confirm the proper identification of individuals who are signing of their own free will.

Although minor agreements or those agreements consented to on-line are often not negotiable, in the dental field, many documents such as purchase and sale agreements, leases or employment contracts can and should be negotiated to see if better terms can be incorporated. A good suggestion is to ask if you can hold off on signing for a short period of time while you or your legal counsel review the details of the language. But just a basic knowledge of contract signing can prevent problems if extra time is not possible

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### **After Patients Urged to Get Hepatitis C Tests, Dentist Files \$10M Suit**

After two dental patients of Dr. Joe Philip's Orillia, Ontario dental clinic tested positive for hepatitis C, the Simcoe Muskoka District Health Unit requested all patients at the clinic to get tested for the disease. There were concerns raised over sterilization and equipment cleaning methods. Dr. Philip made a statement claiming that it is "deeply irresponsible" for the health unit to imply that his dental treatment was responsible for the illnesses, since there was no way to verify that the patients contracted hepatitis C as a result of their visits to his practice. Patients of the practice from January 2012 to December of 2017 were urged to get tested for hepatitis B, C and HIV. The health unit is waiting for more results of testing before proceeding with its investigation. Philip has filed a \$10 million lawsuit against the unit for an alleged "groundless and unprecedented attack" on his reputation. He said he met or exceeded all standards for sterilization set out by the Royal College of Dental Surgeons of Ontario.

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### **Court Rules for Second Time that Dental Practice Underpaid Dental Technician Visa Holder**

A dental practice employing a South Korean dental technician has been charged by an agency of the Australian government with taking advantage of the visa status of the worker to underpay him and not pay him overtime or holiday pay. No Brace Centre Pty, Ltd of Melbourne, Australia was charged by the Fair Work Ombudsman with paying the worker, who was a South Korean national in the country on a 457 visa, a \$15 flat rate to avoid making wage payments required under law. The dental technician, who is now a permanent resident, asked for help from the Ombudsman, to start a legal action against Dr. Ari Master and his dental clinic after efforts to resolve the dispute out of court failed. The clinic had been prosecuted in 2015 for similar underpayment violations, also involving a Korean national on a 457 visa. The underpayments in the more recent case totaled \$36,693. Fair Work Ombudsman Natalie James stated that visa-holders were particularly vulnerable to exploitation regarding workplace violations, and that her office takes such allegations seriously as a result.

### **Dentist's License Suspended After Continued Drug and Alcohol Abuse**

A Chesapeake, Virginia dentist who had been participating in a drug and alcohol abuse monitoring program initiated after a consent agreement allowed him to keep practicing has now had his license suspended for violating the agreement. Dr. James N. Rhodes had been seen by employees bumping into walls last year and smelling of alcohol, and he admitted that he had been obtaining large amounts of anti-anxiety medication from India in order to avoid getting refills in this country. Rhodes' insurance company, The Medical Protective Co, Inc. filed suit against him for not informing them of substance abuse problems.

***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.***

## **“We Want to Become the iPad for the Dentist,” Schein Says of New Internet Venture**

Dental supplier Henry Schein, Inc. and Internet Brands have announced that they will be entering a joint venture to create and market software for the global dental market. The new products, which are labeled under the name “Henry Schein One, combines Schein’s practice-management software such as Dentrax and Easy Dental with Internet Brands’ web based programs such as Demandforce and DentalPlans.com. Schein’s stock price, which is just recovering from the backlash from an antitrust suit against it which resulted in a multi million dollar settlement, rose in response to the announcement, which was accompanied by a statement from Stanley M. Bergman, CEO of Schein, that “We want to become the iPad for the dentist.” He stated that the expansion of electronic medical records necessitated introduction of more “interoperability” on computers and mobile devices. Internet Brands is responsible for many health care consumer websites.

## **Dental Executives Found Guilty of Concealing Donations to Lawmakers**

Two former executives of the Japan Dental Federation have been found guilty of concealing donations over legal maximum limits to two lawmakers of the Japan House of Councilors. The dental lobbying group executives, Mikimasi Takagi and Naofumi Tsutsumi, were sentenced to one and a half years in prison suspended for three years. The Federation was required to pay \$4,500 for its role in the violations of the Political Funds Control Act occurring with the donations more than twice the legal limit by each to Midori Ishii and Masami Nishimura, who represented opposing political parties. The two politicians, who were formerly members of the Federation accepted from \$950,000 to \$1,000,000 by disguising the payments as donations from other organizations. The Federation had made illegal donations in the past, and a limit was set on their donation amounts as a result. The judge issuing the ruling, Iwao Maeda, stated that the Federation “did not

change its attitudes, organizationally diverting the donations from election campaigns, and ignored the law.” The two former group chairmen of the Federation were accused of conspiring with Vice-President Yoshinobu Murata to create the scheme. Both Takagi and Tsutsumi had denied all allegations during trial.

***Attorney Brian Hatch is presenting “I’m Ready to Own My First Practice. What Are the Next Steps?” with other dental practice professionals in banking, accounting and practice transitions on September 19, 2018. Further details will be available soon.***  
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***Looking to Buy or Sell a Dental Practice? Hatch Legal Group can provide legal work and also match up prospective buyers and sellers. Practices are now available for purchase in Massachusetts.***

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## **Before and After Photos Not Allowed Copyright Protection**

A Florida dentist brought a copyright infringement case against seven other dentists who displayed the same “before and after” photos of one of his patients on their websites. Boca Raton cosmetic dentist Dr. Mitchell Pohl found out through a Google image search about the photos of a patient, who was called “Belinda” in trial documents, and recognized them from photos taken for his office in 2004. Pohl’s case was dismissed by U.S. District Court judge Mark E. Walker on June 20th, in a ruling stating that “(m)eeting the standards for creativity is not like pulling teeth.” Protection of photographs under copyright law is allowed if they are “original” or “creative.” Images showing just the teeth, lips and a small part of the patient’s mouth did not meet the “slightest artistic touch” standard that is usually met in copyright cases. The judge considered arguments based on a number of factors,

including the equipment used, the framing and angle of the shot, and when the photograph took the photo. One of the aspects of the case not favoring Pohl was that he couldn’t remember what kind of camera he used to take the photo. The case is unique in its applicability to the dental field, and many practitioners who commonly use before and after photos in their marketing material may face the ruling being applied as precedent in their own situations. Judge Walker prefaced his remarks by stating “(a)lthough the plaintiff may be chomping at the bit to get to trial, Defendant’s motion (to dismiss) is granted.”

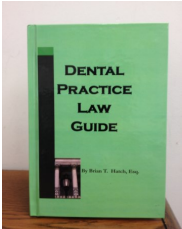
## **Dentist Forged Documents to Gain Anesthesia Certification**

Dr. Pankaj Goyal of Glendale Arizona received his certification to administer anesthesia at his dental practice in 2013 from the Arizona Dental Board, but a recent investigation revealed that he didn’t attend a residency program listed on his application, and two of the

two of the documents he submitted may have had forged signatures. “Proof” of his completion of a two year anesthesia residency program at MetroHealth Medical Center in Cleveland, Ohio included a “Certificate of Achievement” with the center’s logo and apparently signed by the director as well as a letter on Air Force letterhead stating he was under military sponsorship to complete the residency. MetroHealth Medical has no record of his attendance and Dr. Frank Ditzig, the program’s director insists that the signature on the document is not his. While Dr. Mussaret Zuberi is listed on the Air Force document, he would not comment when asked if his signature was real, and his first name was misspelled. Other certificates from MetroHealth submitted to the dental board were not similar to the one Goyal turned in, and it appeared to correspond to a basis Microsoft word template. Air Force dentist Dr. Jose Alvarez, said that he was misled by Goyal about his background before agreeing to sign a letter for him. The Dental Board is now investigating the case further.

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