

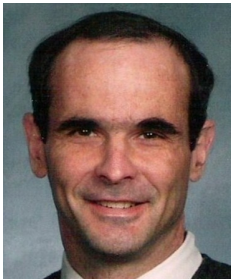
Dental Practice Legal Update

July, 2019

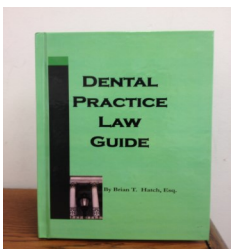
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Division of Insurance Approves Reduced Delta Reimbursements With Conditions

On June 19, 2019 the Massachusetts Division of Insurance officially approved the plan of Delta Dental of Massachusetts to lower reimbursements for dentists under the Premier dental insurance plan by no more than 8.8%, starting October 1, 2019. Since the proposal was submitted on June 13, 2018, which included future market based reimbursement rates, two public hearings have been held involving representatives of Delta, the Massachusetts Dental Society and individual dentists. Although the Massachusetts Dental Society expressed reservations about the plan, it eventually approved the proposal reluctantly. Many individual dentists voiced their opposition to the proposal at the hearings. Division of Insurance Commissioner Gary D. Anderson, inserted in the approval seven conditions that Delta is required to follow in order to proceed with its new methodology. The approval allows a starting date of October 1, 2019 with the initial rates being effective through December 31, 2020. Market rate reimbursements proposed by Delta for 2021 and beyond may go into effect after a DOI examination by September 15, 2020. Dentists participating in the Total Choice PPO plan and accepting electronic payments may receive an "incentive reduction" of 1% to lower the 8.8% decrease in reimbursements to a 7.8% reduction. Delta Dental will fund a \$1,200,000

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How to Manage the Most Common Employee Legal Violations

Training dental practice employees well is one of the most essential functions of an office manager or practice owner, since the laws of agency most often make the employer liable for the employee's actions. What are the most common employee violations that cause an employer legal problems?

Since the regulation of dental practices is often the strictest in the area of infection control, having employees trained thoroughly on this subject is essential. Complaints to the dental board about inadequate infection control are some of the most common actions the board is required to investigate, and lapses by non-clinical as well as clinical employees can lead to discipline or possibly litigation. An annual training session on OSHA is standard in all dental offices.

Employee violations of HIPAA are some of the most commonplace and often ignored parts of the dental workplace, but HIPAA training is often overlooked because audits or penalties are supervised by the federal government, which is often hamstrung by a lack of enforcement monies and personnel. The most important aspect of HIPAA that can alleviate this problem is good Privacy Officer training, since it is a required position to fill, and it carries the most responsibility for internal training and enforcement. When an audit happens, the Privacy Officer has the biggest burden to show that enough HIPAA training and procedures are being used to fulfill the complexities of HIPAA rules. One way to help ensure that employees follow HIPAA

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How to Manage the Most Common Employee Legal Violations (cont. from p. 1)

rules is to inform them that they can be individually liable in addition to or in place of the practice ownership. Regular training of the entire office staff as a group is important, so that every staff member is on the same page as to what is legal under HIPAA and what is not.

Billing and coding errors by non-clinical employees, who are the personnel most tasked with the job of reporting claims to insurance companies, can be a very serious legal problem for a dental practice. Sometimes mere errors in billing can be termed as “upcoding” or not meeting insurance company or MassHealth coding requirements can result in allegations of fraud which most often are the responsi-

bility of practice owners and not individual employees. Regular review of billing employees’ work by more experienced employees and clinical employees and dentists is important to avoiding this liability.

Employment discrimination is a difficult area to enforce, since employees are generally not liable for discriminating on the basis of race, gender, age, disability, sexual orientation, ethnic origin, etc., even though supervisors or employers are responsible for disciplining and correcting discriminatory actions of employees. Written disciplinary rules in this area in a well written employment manual which are enforced by documented disciplinary or corrective actions are the key here to avoid liability

An often overlooked area of employee violations is dental regulation supervisory rules. The rules, as written

in the Massachusetts dental regulations, are complex to read and master, but sometimes just leaving clinical employees such as dental assistants and hygienists to obey the limits of their licenses is not enough. Non-clinical personnel who have billing responsibilities should also be aware of licensure restrictions, since coding under the wrong license often can result in severe penalties for the provider and the owner.

Employee management in dentistry, with its myriad of rules designed to protect the safety of the general public, is a difficult task that many dentists are not prepared for when leaving dental school. Concentrating on something that is not just dentistry takes extra effort, but considering the liabilities for not managing personnel properly, this is an area that is a necessity to learn thoroughly.

Division of Insurance Approves Delta’s Reduced Reimbursements (continued from page one)

“rebasement fund” to distribute to Delta member dentists who are part of the MassHealth program to prevent disruption to their practices. The MassHealth practice reimbursements from that fund will be based on the percentage of patients they treat who are on MassHealth, with the top bracket of dentists with a proportion of 95-100% of their revenue from patients on MassHealth receiving all of the reductions back, those who have 90-95% of revenue from MassHealth patients receiving 75% of the reductions back, and those with 75%-90% of revenue from MassHealth patients receiving 50% of the reductions back. Delta will be required to submit detailed quarterly reports on members’ use of the plans, and that information will be used in making the Division of Insurance decisions going forward in 2020.

Dentists are understandably not pleased with the DOI’s approval of reduced Delta reimbursement

and less reimbursement because of market rate readjustment methods. This was made apparent through dentists stating their beliefs at the hearings that they could not conduct economically viable practices at the new lower rates. Jill Tanzi, DMD from the Massachusetts Dentists’ Alliance for Quality Care (MDA) reviewed the decision and said she was disappointed with the fact that the original proposed 10% fee reduction was only changed to 8.8% and that the “change will reduce choices for patients across Massachusetts as well as create hardships for many dentists and their employees.” She said that her new organization is volunteering to help Massachusetts dentists who are encountering problems with insurance companies, and noted the MDA contact at info@madentists.org. There is evidence that dentists are leaving the Delta provider network, and so what kinds of payment plans or insurance fill this void remains to be seen.

Updated Pediatric Safety Protocols on Sedation Issued

The American Academy of Pediatric Dentistry and the American Academy of Pediatrics have issued a joint statement detailing new safety protocols they recommend in the area of sedation safety for pediatric patients. Examples of deaths of children because of

inappropriate sedation care during dental treatment have prompted the new guidelines. The guidelines focus on having at least two practitioners specifically trained in anesthesia administration in the room while a pediatric patient is undergoing general anesthesia in a dental treatment room. One of the trained providers should be an independent anesthesia practitioner who would be continuously monitoring the patient at all times without leaving the room. The guidelines deal with the specific problem of having insufficiently trained personnel dealing with emergency situations who do not have ready access to the proper equipment to handle a crisis. Included in the guidelines is a requirement that the independent observer and the operating dentist be certified in Pediatric Advanced Life Support (PALS). The referral to emergency personnel through a 911 call must supplement the use of proper emergency procedures as well, since hospital treatment should be available as soon as possible. Important details regarding what to include in operator rooms and other subjects like informed consent to consider are listed. Deaths from pediatric sedation events have become all too common, and the well publicized litigation that has resulted has brought an awareness to the dental community which is now being promoted by professional organizations wishing to set the standard for regulatory reform in this crucial area.

Fake DEA Agents Attempting to Scam Dentists

Scammers who are posing falsely as Drug Enforcement Administration (DEA) agents are targeting dentists and telling them that their DEA licenses are being used to assist in drug trafficking and demanding payments to avoid arrest or suspensions. Dentists have notified the California Dental Association that the fake agents display badge numbers and are using telephone numbers that are similar to legitimate DEA phone numbers. The scam is a recent revival of similar schemes used in 2018 California targeting small businesses including dental practice, and at that time the DEA issued warnings of the extortion attempts to demand payments. The DEA has stated in a press release that DEA never contacts practitioners or members of the public by phone to demand money and all legitimate inquiries are made by official letter or in person. The DEA has set up an online extortion scam report form to deal with the problem.

Former Arkansas Legislator Admits to Accepting Bribes to Promote Dental Legislation

Former Arkansas State Senator Jeremy Hutchinson has pleaded guilty to a bribery charge involving payments to him by an orthodontist to influence him to promote changes to the Arkansas dental practice laws. Dr. Ben Burris is an orthodontist with several practices in the state had wanted to eliminate the specialist restriction in the Arkansas dental practices act so that he and his hygienists could perform general dentistry. Burris was not named in the guilty plea documents but was identified as the likely individual who directed a number of payments to Hutchinson totaling \$127,500 and provided free dental work worth \$15,000. In exchange Hutchinson filed legislation to further the objectives of Burris, and eventually the bills became law. The plea also involves violations of tax laws in failing to report the money received on his federal income tax returns. The case against Hutchinson was solidified by a series of detailed text messages involving an orthodontist later identified as Burris requesting

help with the legislation and discussing monetary compensation for Hutchinson, who was the chairman of the budgetary committee and also helped Burris put pressure on the Arkansas Board of Dental Examiners.

Exonerated Inmate Sues Dentists Over False Bite Mark Evidence

A Wisconsin man, Robert Lee Stinson, 54, who was freed by DNA evidence after serving 23 years of jail time is now suing the dentist who he said helped law enforcement convict him to a life sentence with false bite-mark evidence. Stinson was accused of murdering his neighbor in 1984 but the Wisconsin Innocence Project helped win his release through the introduction of exculpatory DNA evidence. The dentists involved in the case said they were private parties who should be dismissed from the case, but they were ruled to be part of the conspiracy to convict Stinson wrongfully.

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

Dental Assistant Who Sold 1000 Oxycodone Pills Sentenced to Prison

Nancy Ayres, a Pennsylvania dental assistant, has been sentenced to 19 months of jail for selling than 1,000 Oxycodone pills to a confidential informant. Ayres, who worked as a dental assistant for several dental offices in Philadelphia, Delaware and New Jersey, received prescriptions for oxycodone from at least three different medical providers from 2017-2018. She eventually met up with a confidential informant at a mall in Deptford, New Jersey through text messages and arranged on March 18, 2018 for the sale of 303 oxycodone tablets at \$8 each, which she delivered on April 6, 2018. After the sale, Ayers admitted by text message that selling the drugs “Scares me!! That’s like 5 or more years in jail!!!” Nonetheless, she continued to try to sell the informant more pills, delivering 298 pills at the same mall on

April 27, 2018 and following up with a third sale of 311 pills on May, 18, 2018. At that sale, Ayres also tried to sell the informant fentanyl and Cialis. At the final purchase of 132 oxycodone pills on June 25, 2018, Ayres said she was “stock piling” oxycodone and could also provide Percocet, Valium and Lorazepam. A friend of Ayres said she had been carrying large amounts of cash, which she told her she had won at a casino. Apparently Ayres had also falsified her certification as a dental assistant during her employment with the practices she worked for.

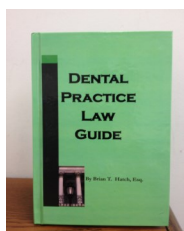
Judge Refuses to Enjoin Facebook Reviews of Dental Practice, Citing Free Speech

In a libel case brought by a Greensburg, Pennsylvania dental practice against a former patient who posted negative reviews on Facebook, a judge refused to issue an injunction to require that the posts be taken down, citing a possible adverse effect on free speech.

Three River Dental claims that the posts by former patient Robert Ottaviani contained false information about investigations and fraudulent business practices. The company’s own Facebook site contained the reviews, but Facebook does not allow the removal of review posts, according to Three Rivers’ attorney Marc Schneider. Judge Marc Scherer said in his opinion that Three Rivers had not presented enough written evidence that investigations had not been started against the practice and that it had not shown enough evidence that the posts would have a negative impact on its business. Judge Scherer did not, however rule on the underlying libel claim, and also stated that his ruling did not necessarily apply to other online postings or statements made online. The libel case will be ongoing, and Ottaviani claims the investigations at issue are still active. Scherer said that there should not be a deterrence effect on future reviewers by imposing an injunction that might suggest lawsuits could be the result if negative reviews are posted.

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