

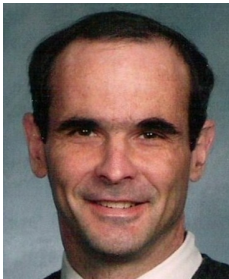
Dental Practice Legal Update

July, 2020

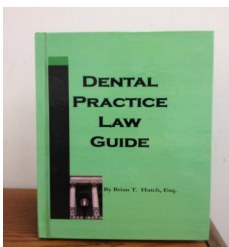
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Phase 3 Allows all Dental Treatment, Including Cosmetic Procedures

Phase 3 of Massachusetts Governor Charlie Baker's phases for reopening of Massachusetts business and other activities temporarily shut down during the COVID-19 pandemic now allows all dental procedures to be performed in dental offices. Prior to June 24, 2020 cosmetic procedures were excluded from the guidelines but now most dental offices are in full operation. Massachusetts dental offices were concerned that patients might be fearful of going back for treatment with other parts of the country still experiencing upswings in virus infections, but it appears that patients are heading to the dentist in full force without hesitation.

There are still CDC guidelines that must be followed and attestation requirements that must be used which were in effect in Phase 2, but most dental offices have adapted to the new normal of increased awareness and protection against infection possibilities in the dental office. The key points from the CDC guidelines are designed to proactively communicate to personnel and patients the need to not come in for treatment if they exhibit symptoms of COVID-19 illness, including a positive COVID-19 test or regular close contact with someone who may have infected a patient or personnel with the virus. Patients are now asked to inform dental offices if they have

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Valuations and Sales of Practices During COVID- 19

The shutdown of dental practices during COVID-19 from March through parts of June of this year impacted the bottom line of most dental practices to a significant degree. How does this affect valuations of dental practices and selling a practice now that three months of revenue is missing from the profit and loss statement for the year?

There are a number of points which are positive for selling a practice in the present time, regardless of the absence of patient treatment for non-essential services during the crisis. It was uncertain right up until the end of May whether patients would return quickly or at all if the fear of being infected were too widespread. Whether it was good publicity about the inherent safety of dental practices in controlling infectious disease or whether there was pent up demand, that concern turned out to be unfounded. Most practice managers reported that their offices were taking even more than usual numbers of calls for rescheduling treatment, including cleanings and elective and cosmetic procedures. The revenues of many practices might even increase during the remainder of the year, though it is questionable whether that will make up for lost treatment income for the three month shutdown period.

If there is increased revenue a potential purchaser can look forward to if

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Valuations and Sales of Practices During COVID-19

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a sale is consummated now that offices reopened fully an astute buyer might realize there is an opportunity that would be available during the current period that matches or exceeds revenues in prior years. After all the lost shutdown revenue is the seller's loss and any loans taken out to offset the losses are the seller's responsibility.

How does a valuation expert who must look at profit and loss statements to determine practice value weigh the shutdown variation in determine a practice price? It must be realized that most valuations take into consideration the previous three calendar years of profit and loss statements, which would include 2017-December of 2019. The three years of tax returns for those calendar years, which are usually used to confirm or supplement profit and loss statements will also show the pre-pandemic figures.

Aside from the objective profit and loss analysis of the practice valuation, there is the subjective valuation aspect as well. In that case, the 2020 shutdown's effect on the practice will be considered. Good practice managers and owners will have instructed their office staff to keep in touch with their patient base throughout the shutdown to assure them that practice is going above and beyond normal infection control procedures to assure safety patients and staff on reopening. Some practices have had employees make personal phone calls to all patients in the active files to let them know they can reschedule treatments after the shutdown is lifted. Those practices will appear even more valuable now that patient goodwill has been preserved and even enhanced by the positive contacts with the offices even when treatments are not being performed.

The loss of valuable staff members who had to be laid off or put on furlough during the shutdown may have some effect on the practice. If the practice has lost key personnel a buyer may have to find new capable staff who

can fill important positions immediately. If employees who have been on furlough do not come back right away when the chance to come back either part-time or full-time it also may affect practice operations. Employees may be fearful of returning to work because of the possibilities of association with the general public who might be infected and are asymptomatic. There are employees who want to keep getting the \$600 federal unemployment stimulus checks while not working. The important employees should be incentivized to return.

Serious and not totally unfounded concerns about the strength of the dental industry and practice value were expressed during the shutdown. But through diligent work of practices to retain goodwill, and the general receptiveness of the public towards returning for dentistry, it appears that valuations and sales shouldn't be too adversely affected this year. Practices have adapted to more stringent standards to control contagious disease and patient bases, which make up the main value of practices, are strong.

Phase 3 Allows all Dental Treatment to Resume

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developed symptoms or have been diagnosed with COVID-19 within 2 days. The previous recommendation for dental offices to wait 15 minutes after completion of clinical care and exit of each patient to clean and disinfect room surfaces was removed in favor of other CDC guidelines which has clarifying language which still requires significant disinfection procedures. Also, contact tracing procedures for personnel who may have been exposed to someone who has tested positive for COVID-19 now must be done within 2 days after the positive test. The detail in the Guidelines is extensive but the main focus is to minimize the exposure from possible harm to patients and personnel caused by any infection. Although legally not required, making patients and personnel aware of the efforts of

practices to adhere to the recommendations has been yielding positive results as far as reassuring patients and employees that either visiting the dental office or working with patients in a dental office setting is safe. These guidelines are additions to the normal CDC rules regarding dental office standards..

Dental Practice Paid Minors to Treat Teeth, Committed Malpractice

Allegations of payments to minors for allowing a Texas dental practice to perform treatment on their teeth have surfaced as a result of a malpractice action filed by on their behalf and settled for an undisclosed amount. In the lawsuit, Robertson v. Shariati, representatives of the dental practice approached the minors to ask them if they were covered through Medicaid and would accept \$10 in exchange for allowing a dentist from the practice to perform dental treatments on them. The representatives

then allegedly drove the minors in a van owned by the defendant practice to a dental clinic in Dallas County Texas where invasive dental procedures were performed without their parents' knowledge or consent. Some of the procedures included extractions, placements of fillings, crowns and sealants and pulp removal. Their parents alleged that the defendants then submitted over \$6,000 in charges to Medicaid with falsified documents indicating consent. The charges included performance of unnecessary treatment and negligence amounting to malpractice causing permanent damages to the minors' teeth. The plaintiffs, as representatives of the two unnamed minors alleged that the treatment was grossly negligent in ignoring the health, safety and welfare of others and was below the standard of care. The suit additionally claimed that the defendants failed to properly train and supervise their employees regarding the procedures required to obtain necessary informed consent. Plaintiffs asked that the Court award punitive damages against the defendants. A confidential settlement between the parties was reached before trial.

Delta Dental's \$35M COVID-19 Relief and Recovery Program Provides Support to Patients and Providers

Delta Dental of Massachusetts is providing Personal Protective Equipment (PPE) reimbursements of \$10 per patient for patients seen between June 1, 2020 and August 31, 2020 to help defray operational costs to dentists of providing additional PPE during COVID-19. Many practices were concerned about how to pay for significant costs of revamping their practices during the pandemic to include further infectious disease control equipment. Some practices were considering including a surcharge on treatment charges to account for the increased costs, but there were questions about how these kind of additional charges would fit in with dental insurance plans that have fixed copays that would not allow this kinds of charges.

A further change to its insurance benefits programs will also benefit both providers and patients and would allow more than one preventive treatment visit this year to make up for missed visits during the shutdown. This change is still subject to Division of Insurance approval.

Delta has also provided a Provider Advance Program for its network providers to give them additional cash flow during the shutdown to make up

for revenue streams cut off during the shutdown. The Massachusetts Dental Society Foundation's Covid-19 Recovery Fund, which also serve to pay for increased PPE has seen a commitment by Delta of Massachusetts for financial backing.

Part of the \$35M program is centered around patient and employer-Delta insurance providers to promote continuing to receive treatment regularly. Delta members receive 30% credit for premiums paid during the shutdown months of April and May of this year and employers receive a 60% credit on insurance premiums applied in June. As an incentive to patients to come back for regular treatments this summer Delta is offering a free electronic toothbrush to patients visiting member dentists for a preventive cleaning from June 1, 2020 through August 31, 2020.

SmileDirect Club Sues Delta Dental for Failure to Cover Orthodontic Services

SmileDirect Club, which has been involved in numerous intense litigation battles with orthodontists' associations, state dental societies and regulators over its off-site direct to consumer orthodontic services is now suing Delta Dental for its refusal to provide insurance benefits for customers who use its services. SmileDirect Club has insisted that its business

plan, which does require in office orthodontic visits to complete teeth straightening services, is safe and effective in spite of objections from both private and public entities and orthodontists claiming otherwise. SmileDirect Club states that Delta is conducting a "scheme to preserve profits" and claims that it is the only major insurer that does not cover its services. It claims Delta is misleading its members and preventing their access to effective treatment.

Federal Trade Commission Sends Warnings About Oral Peroxide Gel Being Used to Treat or Prevent COVID-19

The Federal Trade Commission is now sending warnings to a San Francisco California based company, San Francisco Dental Wellness about its claims that oral peroxide gel can treat or cure COVID-19. The statement by the FTC cited marketing claims by the company that "San Francisco Dental Wellness is now offering a peroxide gel that allows you to use (sic) for 15-20 minutes to help prevent the spread of COVID-19." The letter demands that the company cease all such false claims and report back to the FTC within 48 hours of its specific actions taken to address the agency's concerns. The FTC also warned that it would seek a federal injunction if the company failed to comply with its order. The letter is just one of a series of actions the FTC has been taking recently to expose false claims about a number of fake remedies for COVID-19, and over 250 warning letters had been sent out since the start of the pandemic.

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.

HIPAA and OSHA Infection Control Training by Zoom is now available through Hatch Legal Group in conjunction with Dental Compliance of New England.

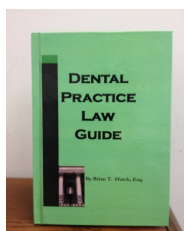
Policies and Procedures Manuals, customized for the dental industry and your office, are available from Hatch Legal Group. New COVID-19 Supplements are available to ensure practice protocols for meeting the pandemic are acknowledged by all employees. b r i a n h a t c h @ hatchlawoffices.com

All dentists and their dental practice staffs are encouraged to call Attorney Brian Hatch with their questions on how the COVID-19 affects your practice and your employees. Call 508-222-6400 or e-mail b r i a n h a t c h @ hatchlawoffices.com.

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

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