

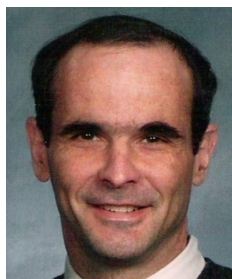
Dental Practice Legal Update

June, 2018

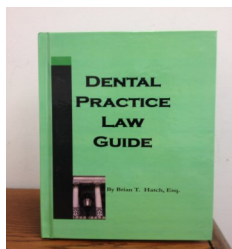
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The Dental Therapist Law's Effect on MassHealth Dental

A dental therapist midlevel provider bill which is supported by the Massachusetts Dental Society (MDS) and most patient advocacy groups now support may pass the Massachusetts legislature by July 31st. MDS supported the bill in part because of its requirement that the newly created category of providers maintain a "patient panel" composed of at least 50% of patients from underserved populations including MassHealth Dental patients. Dental therapists must complete a master's degree from an accredited program and complete 2,500 hours of practice under the direct supervision of a licensed dentist. The law will provide more MassHealth dental care providers, but will it allow dentists to accept MassHealth and still make a living? Dental therapists could cover, without on-site supervision of a licensed dentist, procedures with low reimbursement rates such as oral health screenings, mouthguard fabrications, and radiograph readings. That leaves dentists more time to perform more complex and profitable procedures. But MassHealth Dental reimbursements only cover 30-40% of regular fees, which is much less than the 65% rate that most practices need to cover overhead. MDS President Dr. David Lustbader said that, although the MDS supports the bill, until the state can come up with funding to increase reimbursement rates to cover the costs of care, the difficulty MassHealth patients have in finding a dentist will continue.

Do Your Due Diligence Before Buying a Practice!

So, you're looking at a practice to purchase and you have decided on one practice that is in the right location and in your price range. Confirming your interest to the seller with a deposit to give you exclusive rights to purchase the practice within a set amount of time is only the start of the important part of the due diligence phase of the purchase.

You should have done at least part of the work prior to signing a letter of intent with a deposit by looking at an appraisal by a trusted source to confirm that the selling price is reasonable. A professional appraisal will be based on the last three years of profit and loss statements and an analysis of objective and subjective factors to arrive at a valuation close to the selling price. The appraisal must show net income, value of tangible assets like equipment, and number of active patients. Also, the letter of intent must specify that the purchase is contingent on passing the tests of due diligence set by the buyer well before the closing.

What is the information that must be requested as part of due diligence before the closing, and preferably before the asset purchase agreement is signed? First, the buyer or buyer's representative should request three years of federal income tax returns and financial statements for the practice, three years of productions and collections by provider, itemized by procedure. A non-disclosure and confidentiality agreement will most likely be required by seller before providing that information.

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While the profit and loss figures may show that the previous owner has had a sufficient net income to justify what the buyer expects to receive to be able to meet goals for future income and return on investment, further detail is often needed. This is where a detailed analysis of expenses can show a buyer how the net income could even be better under new ownership, particularly if gross receipts are high when net income is also looked at. Tax returns alone don't always reveal the detail needed to show how expenses can vary from owner to owner, but they do confirm certain necessary items like property improvements or depreciation.

Supplementing the profit

and loss figures is an analysis of what kinds of procedures are done and what fee schedules are used for each kind of procedure. The buyer will want to know if they have the expertise to perform procedures that the owner currently performs if the practice does more specialized procedures such as implants or some oral surgery.

Alongside the fee schedules, the buyer should realize what insurance the seller takes and has contracts with at the time of sale. If public health insurance is accepted, that will affect the bottom line significantly, and it sometimes is a deal breaker if the wrong insurance determines a good percentage of collections.

What contracts of associates and other employees will the new owner be required to fulfill? Associates could have set termination notice provisions

or have a guaranteed term contract. Employees may have benefit plans or wage issues that need to be resolved.

Make sure necessary research is done on existing liens or debts, such as equipment loans, which must be resolved by closing, and ensure that no judgments are outstanding or taxes owed. Recent important testing data, such as spore testing, should be reviewed. The maintenance record of all equipment should be obtained, as well as the age of the equipment confirmed.

Early contact with the landlord should be part of the due diligence process, and the sale should be contingent on obtaining a satisfactory lease.

The financing bank may require some due diligence before loan approval, but the rest should be done by you or your representative before signing on the dotted line!

Pediatric Dentist Accused of Unnecessary, Negligent Procedures, Surrenders License

Numerous patient complaints about unnecessary and negligent procedures performed for increasing profits have prompted a Wisconsin pediatric dentist, Dr. Andy Mancini to surrender his license. Now the parents of two of the child patients are suing him for damages. Complaints included that he allegedly extracted six teeth from a child without parental consent and performed 12 fillings when the diagnosis called for only one. The lawsuit was filed by the parents of Rebecca Veibroek and Lisa Vansomeran, who say that Mancini left some dental work unfinished, performed unnecessary extractions, installed unnecessary caps, and conducted inadequate diagnostic testing and anesthesia administration. The lawyer for the children's parents, Robert Hilliard, commented about Mancini that "Hudson, Wisconsin had its own Joseph Mengele hiding in plain sight." The state of Wisconsin has filed an action against Mancini for insurance fraud.

Hilliard stated that over 70 patients have contacted him about their concerns since the complaints were filed by the two original plaintiffs. The suit also claims that Mancini made threats against patients who were treated at the practice, which is named La Petite Dentistry. The lawsuit claims that the plaintiffs have had difficulty obtaining patient records from the practice, which is now closed.

Drug Companies Hired Dental Hygienist to Perform Sexual Favors to Market Fentanyl Spray

Acting as a result of complaints by pharmaceutical sales representatives for fentanyl manufacturer Insys, the Department of Justice has filed a consolidated lawsuit against the company claiming bribery, kickbacks and encouraging prescription writing through sexual favors for doctors. One of the complaints alleges that the company hired a dental hygienist to have sexual relations with doctors in exchange for writing prescriptions for the fentanyl spray Subsys. That complaint alleges that a manager from the company told her that the former dental hygienist was "dumb as rocks, but that she was sleeping with another doctor and getting a lot of prescriptions out of him." While Subsys is approved for treating

cancer-related pain, the doctors were urged to prescribe it for general chronic pain at dangerously high doses. One woman, a 32 year old patient at the time, fatally overdosed when using Subsys for treating fibromyalgia. An allegation by one of the sales representatives says that a company manager said that the patients were "already addicts and their prospects were therefore essentially rock-bottom." The founder of Insys, John Kapoor has been criminally indicted in the bribery scandal, and seven former Insys executives are being charged with fraud and conspiracy in connection for their roles.

Provide your employees required HIPAA training and present to them an employee manual customized for the dental industry and your office.
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Attorney Brian Hatch has been practicing law for over 33 years and has focused on the dental industry since 1995.

ADA Criticizes Absence of Federal Consideration of Acute Pain in Handling Opioid Crisis

Although the American Dental Association has been at the forefront of efforts by state and federal governmental agencies to deal with the crisis involving the medical profession's use of opioids to treat pain, it has recently criticized the focus at the federal level on use of opioids to treat chronic pain instead of the short-term acute pain that is involved in dental procedures. In a May 22nd letter to Vanila M. Singh, M.D. who chairs the newly formed federal Pain Management Best Practices Inter-Agency Task Force. ADA Executive Director Dr. Kathleen T. O'Loughlin and ADA President Dr. Joseph P. Crowley said that "federal agencies have not sufficiently have not sufficiently addressed best practices for managing postoperative dental pain, which is more nuanced than managing pain in medical settings." The need for long-acting opioids is evident more in treating long-term chronic pain than

in dentistry, where one-time dental surgery does not require long-acting opioids in most cases. The ADA has urged dental schools and state dental boards to emphasize training and education in the prescribing of opioids in dentistry and the need to limit unnecessary amounts of opioids prescribed for dental procedures, some of which can be used for starting addictive habits or sold on the black market.

Israeli Research Attempts to Find More Uses For Cannabis in Dental Care

Now that marijuana and cannabis have been made legal for medical and recreational use in many states, researchers are looking for new ways to use cannabis to reduce dental pain as well as help heal diseases associated with dentistry. Dr. Veronica Stahl, an Israeli dentist and researcher, has started an organization called Cannabite Lifelong. She says that cannabinoids might be effective in reducing dental pain without destroying nerves and removing natural teeth when treating gum disease, cavities,

and other soft tissue oral diseases. Cannabite Lifelong is based in Belgium but has presented abstracts to explain current and future research at an Israeli government sponsored conference. Stahl has hopes of introducing cannabis based products to the dental industry through her research.

Attorney Brian Hatch is presenting a seminar with other dental practice professionals in banking, accounting and practice transitions on practice purchases to take place on September 19, 2018. Further details will be available soon.

Looking to Buy or Sell a Dental Practice? Hatch Legal Group can provide legal work and also match up prospective buyers and sellers. Inquire about practices in Mansfield and Hanover, Massachusetts now for sale.

Suit by Firefighter Against Dentist Who Lost Son in Fire Dismissed

An 85 year old Mattapan, Massachusetts dentist lost his 50 year old practice in 2016 when an unattended Bunsen burner caused a fire which destroyed the building and killed his son. A firefighter who responded to the fire and was injured sued Dr. Walter Holman for negligence and the pain and suffering resulting from a leg injury which occurred while fighting the blaze. Although the firefighter's salary and medical expenses were covered because of state law regarding first responders, pain and suffering can still form the basis of a private lawsuit against a negligent party by the injured firefighter. In this case, Holman not only lost his son, Christopher, in the fire, but his business insurance only covered the destroyed building structure but not liability for injuries suffered. The parties agreed to settle the

suit late last month and the action was dismissed not long after an investigative report by a local television station was aired and social media comments decrying the suit and the law which allowed it were posted.

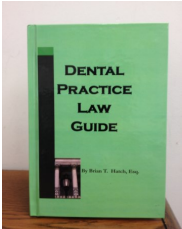
Businessman Accused of Fraudulently Promoting Event Center Company at Dental Conferences

A Utah businessman is accused of a fraudulent scheme to raise money and attract investors to his Falls Event Center, LLC company at dental conferences while lying about profitability. Steven Downs, founder of the company was sued by the U.S. Securities and Exchange Commission for telling dentists through Powerpoint presentations at dental conferences that the company was profitable and could grow from 8 venues 200 venues by 2022. He raised over \$130 million from 300 investors even as he accumulated large amounts of debt in mortgages on the sites built by the com-

pany. Now the designer of the buildings, Pontis Architectural Group is suing Downs and his company for payments which have not been made on loans he took out to build the event centers. Downs settled the suit with the SEC for a \$150,000 fine but is now withdrawing from the consent settlement, stating that the SEC conducted a "bait and switch" campaign during the investigation and legal action. He alleges in a lawsuit against the SEC that the investigation and resulting findings accused him wrongly of fraudulent behavior when his actions only constituted "negligence" and that his company was adversely affected by the publicity the suit attracted in the media. Downs characterizes himself as a "cause capitalist" who also owns a sandwich company called "Even Stevens" which distributes a sandwich to non-profits for every sandwich it sells. His website says that he was named "humanitarian of the year" for his work helping communities. He insists that he will continue to build venues during his legal fight with the SEC.

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