

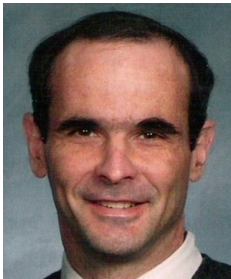
Dental Practice Legal Update

June, 2019

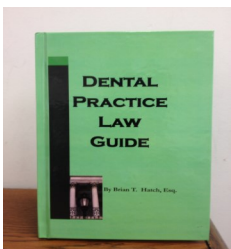
Volume 16 Issue 6

Dental Practice Legal Update is published as a courtesy to the dental practices industry by:

Hatch Legal Group
8 North Main Street
Attleboro, MA 02703
Phone: (508)222-6400
hatchlegalgroup.com
brianhatch
@hatchlawoffices.com



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



Johnson and Johnson Called "Kingpin" of Opioid Crisis in Suit

Johnson and Johnson, one of the largest drug manufacturers in the world has been accused of being the "kingpin" of the opioid crisis in a multi billion dollar lawsuit filed by the state of Oklahoma. The role of Johnson and Johnson in importing raw materials which pharmaceutical companies such as Perdue Pharma used to manufacturer opioids was the chief action prosecutors used to allege that the company deceptively downplayed the addictive qualities of the drugs. The state alleges that Johnson and Johnson marketed opioids during the 1990's to medical professionals as "safe and effective for everyday pain" and thus created a oversupply of the drugs which contributed to the deadly opioid crisis in that state and in the United States. The company was accused of creating a "public nuisance" that will cost between \$12.7 billion and \$17.5 billion over the next twenty to thirty years to correct. Johnson and Johnson, which is a manufacturing giant in a number of home health product areas, including baby powder and baby shampoo, manufactures a fentanyl patch which is prescribed for serious pain. The company denies that public nuisance law applies to this situation and denies that its marketing tactics were misleading in any way. The Oklahoma suit also names Perdue Pharma and Israeli based Teva Pharmaceuticals as other parties responsible for convincing medical professionals to prescribe more and more painkillers while downplaying their addictive qualities.

Delta May be Unlawfully Enforcing its Audits

Delta Dental of Massachusetts has been conducting audits of dentists throughout Massachusetts to recover what it says are overpayments to dentists that it says were wrongfully made, and trying to retroactively enforce recovery of those payments over several years. While "utilization reviews" are a contractually stated right of Delta, its demands to recoup thousands of dollars of already paid out claims may have overstepped this right, and may be considered as unlawful on a number grounds.

Delta begins its audits through a statistical analysis of claims to identify "outliers" of dentists who have a larger number of claims than a "panel" of dentists it alleges is an average of dentists who are network providers. While on the surface this method appears to be reasonable, it becomes apparent that this analysis is performed without reference to the requirements of the treatment needs of specialist dentists to provide certain types of care. For example this "data analysis" determines that multiple periapical x rays performed to diagnose or control possible complications that conditions of patients are referred to specialists for are treated the same as "routine x rays" which it says are done once every three years. It is obvious that this kind of analysis was done by statisticians and not dentists. At the next stage of the review process, once an "outlier" dentist is selected for an audit, 30 sets of patient claims are analyzed for errors or overpayments which may be classified by its fraud prevention and recovery department as reason to monitor the dentist and require

(continued on page 2)

Delta May be Unlawfully Enforcing its Audits

(cont. from p. 1)

“necessary changes” in treatment methods it had warned dentists to make as a result of its original statistical analysis. Delta claims a “dental consultant,” who is unnamed, and without naming his or her credentials as a licensed dentist, reviewed these records for failure to support “dental necessity.” Its follow up letter with this claim is signed not by a licensed dentist but by a hygienist, who is not allowed by the Massachusetts Dental Regulations to make any decisions regarding diagnoses. Then all claims, sometimes hundreds, with similar supposed errors are noted to demand recoupment of thousands of dollars in previously made payments to

to dentists for the previous several years. Even the make up of a “Peer Review” panel which reviews requests for reconsideration of the demands is for the most part unnamed and may not correspond to the dentists’ treatment specialty.

The legalities of this process, besides the questionable nature of unlicensed personnel evaluating the diagnostic methods of licensed dentists, are being challenged on a number of fronts. The demands for records may very well go beyond the “minimum necessary” standard required for any covered entity allowed to review patient records under HIPAA for specific purposes alone to examine protected health information. This could result in fines by the Office of Civil Rights if reviewed by HIPAA auditors

But what are the avenues for

dentists to take to prevent this questionable attempt to affect treatment decisions and to recoup hundreds of thousands of dollars which may be demanded to be paid within a matter of weeks?

Bad faith attempts to injure one party to a contract between two parties in order to prevent that party to gain the benefits of that contractual relationship are actionable in court. Additionally, the Massachusetts law that protects consumer rights, M.G.L. c. 93A allows for collection of up to treble damages for unfair and deceptive trade practices. The unfairness of business practices of a dominant party in a market such as a large insurer may be challenged. The “unjust enrichment” of an insurer collecting retroactive and questionable “overpayments” is a cause of action often allowing injured parties to regain payments unlawfully or unfairly obtained. The legal pushback against Delta of Massachusetts for its heavy handed tactics may only take time for it to affect its efforts to conduct a review process that has legal flaws.

Dentist Swindler Sentenced to 33 Months in Prison

Former Murfreesboro, Tennessee dentist Richard “Nate” Schott has been sentenced to 33 months in federal prison after pleading guilty to seven counts of health care fraud, including improper billing, falsifying dates of service, up-coding claims, and submitting false claims. He had been audited a number of times and warned of the deficiencies in his practice process, and negligent patient treatment and failure to provide services for payments made were highlighted in the charges. Schott was ordered to pay \$956,448 in restitution to TennCare, the state Medicaid program and other commercial insurers. The FBI and Assistant U.S. Attorneys Kathryn Booth, Sarah Bogni, and Byron Jones investigated the case and prosecuted the charges. Patients who were treated at his practice also lost significant sums of money for services not completed or negligent treatment, but were not involved in the settlement and may never receive compensation. Insurance company attorneys have not represented the injured patients’ interests.

New Practice Owner Faces Age Discrimination Charges After Firing Eight Hygienists

After purchasing Capital City Dental Care in Harrisburg, Pennsylvania in August, 2015 the new owner proceeded to fire eight of the nine hygienists older than 40 years old from September, 2015 through November, 2015. The practice replaced the hygienists with 14 new employees, 13 of whom were under 40 years old. The fired hygienists were given no prior notice or reason for termination. The Equal Employment Opportunity Commission filed suit against the practice in federal court in Pennsylvania for violating the Age Discrimination in Employment Act (ADEA), which protects employees over 40 years old who are qualified for their positions and can show an intent to discriminate against them because of their age. The parties had attempted to go through a voluntary dispute resolution process but had failed to reach a settlement. EEOC Regional Attorney Debra M. Lawrence is leading the case against Capital City Dental Care.

New York City Dentist Tries to Hire Immigrant as Personal Sex Worker

A New York City dentist, Dr.

Soleiman Rabanipour said that he was unable to hire a newly arrived sixteen year old Venezuelan girl for office work because she couldn’t speak English. Rabanipour then allegedly attempted to kiss her and offered her a different position: as his personal sexual partner. His proposal was that she could provide “Sex in the office. Four days a week. One hundred dollars an hour. Plus unlimited dental care.” After the girl responded negatively, he repeated his offer, this time with the girl recording the same statement on her cell phone. The girl’s mother, Ninfa Calderon Pereira, initiated a lawsuit against Rabanipour and reported the incident to the New York City Police Department. No arrests have been made but the civil suit is continuing in the Manhattan Supreme Court.

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.

Dental Office Seeks Damages and Court Order After Libelous Social Media Posts

A Three Rivers, Pennsylvania dental practice has filed a libel suit against former patient Robert Ottaviani, who it says made untruthful statements on social media starting May 20, 2019 implying that the practice was under investigation for unethical and fraudulent acts. He made the initial posts on Facebook and continued to make allegedly disparaging and untruthful comments on other on-line forums after that up through June 4th. Ottaviani also posted comments about the quality of care he received, and the practice also claims those statements are part of the libel suit. Within the lawsuit it is claimed that the practice suffered untold harm because it is unable to know how many former or potential patients have decided not to seek treatment at the practice because of the disparaging posts. Ottaviani has posted on Yelp that his insurance company is looking into the claims he made. The suit does not indicate whether the Facebook or the other on-line services that were used by Ottaviani were contacted to see

if the posts could be removed. Part of the lawsuit asks for a court order to have the posts taken down and requiring Ottaviani to refrain from posting additional disparaging comments.

New Allegations of Fraud Made Against Dentist With History of Violations

A complaint of fraud initiated by a patient against Dr. James Charles LaJevic of Rancho Santa Fe, California, continues a series of troubling legal and professional problems the dentist has faced, including two other charges within the last six months. One of those charges was by an associate, Dr. Gary Braunstein, who filed an action in small claims court to recover a reimbursement owed him for dental treatment performed after a patient's assault and malpractice action against LaJevic resulted in a refund from health care financing company Care Credit. Braunstein told a local newspaper that "(LaJevic) just abuses people." There is a history of problems LaJevic has faced since the first disciplinary action taken against him by the Pennsylvania State Board of Dentistry in 1994. The

Board found at that time 12 violations against LaJevic, including practicing dentistry without a license, taking office drugs for personal use, patient harassment, keeping inadequate records of controlled substances and patient abandonment. After his license was suspended for two years, additional charges were brought for using an expired Drug Enforcement Certificate of Registration, and his license was suspended again in 2001 after he falsified DEA renewal applications. In 2011, after coming off his suspension, complaints were issued against LaJevic and his partner Lori Werder for practicing dentistry without a license. LaJevic defended himself by saying "I'm in the losers' bracket. I have no room to make mistakes. I'm like a Boy Scout out here in Encinitas and my dentistry is excellent. You'd have to put a gun to my head for me to do something like this. A man should be considered innocent until proven guilty."

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

Dental Practice Purchaser Fires Prior Owner for Harassment, Wins Damages

A purchase of a dental practice in Queensland, Australia, with the selling dentist staying on to practice as an employee, turned into a suit for damages when the employee dentist was accused of sexual harassment. Dr. Steven England was accused of multiple instances of sexual harassment of a dental assistant, which at first he denied, and then he declined to dispute the facts alleged. The purchaser of the practice, Maven Dental Group sued Dr. England based on a contractual provision in their purchase and sale agreement/employment agreement that he could be terminated for conduct which would adversely affect the reputation of the business. They claimed that the indemnities provision of the contract not only allowed them to terminate England, but to collect damages for the loss of profits suffered because of his absence from

practicing dentistry at the practice. Maven Dental Group eventually won damages for \$1,446, 453.23 for lost profits for the remainder of the employment term of the contract, which was five years and seven months. Damages were calculated by the difference between the earnings the terminated dentist would have made for the balance of the term and the earnings an average dentist who replaced him would earn. The amount of the damages included a discount for the time value of the money and other uncertainties.

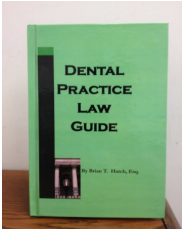
Arkansas Sued for Dental and Medical Treatment of the Disabled

A disabled and elderly Arkansas woman has filed a suit against the Arkansas Department of Health and Human Services for its treatment of her under a Medicaid program to assist in the care for the disabled at their homes. Ginger Elder, 71, of Craighead County,

Arkansas, is being represented by Legal Aid of Arkansas, which is suing on behalf of her and others in similar situations whose medical and dental needs were not met, and who had to pay out of pocket expenses for the necessary care. The main part of the lawsuit is that she was terminated from the ARChoices Medicaid program, largely as a result of a computerized income assessment of the income requirements of the program and her household, but was also denied appropriate appeal rights. The suit says the Department also discouraged her and others from exercising any appeal rights they did have. Elder's husband, 73 year old Vilas Elder, is not physically able to care for his wife, and has to work a part-time job to pay for needed benefits, including dental care, that the Medicaid program would have covered. The lawsuit names the DHHS Director, the Director of the Division of Provider Services and Quality Assurance, and the managing attorneys for the DHHS/

Hatch Legal Group
8 North Main Street
Suite 403
Attleboro, MA 02703

Available Now at
hatchlegalgroup.com



Dental Practice Legal Update



HATCH
LEGAL
GROUP [*A Dental
Practice
Specialty
Law Firm*