

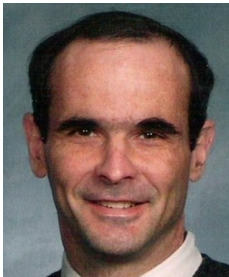
# Dental Practice Legal Update

**March, 2019**

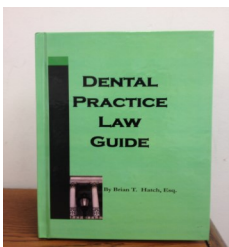
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## **Delta of WA Sued For Overriding Dentist Board Members, Patient Focus and Transparency**

The Washington State Dental Association (WSDA) and three dentists have filed a lawsuit against Delta Dental of Washington because of its rejection of by-law amendments proposed by its members, and supported by Delta Board of Directors dentist members, which were designed to make Delta's operations more patient focused and transparent. In 2017 meetings of more than 2,300 Delta Washington members, more than 91 percent of the members voted for those amendments. The proposed by-law changes were considered by Delta's Board of Directors, which has a minority voting membership of dentists. The majority directors vetoed 12 of the member approved amendments, voted for 6 of the amendments would not be implemented, and voted for 3 of the amendments would be implemented with conditions. In August, 2018, Delta of Washington members again petitioned for a general meeting, which was held on November 15, 2018. More than 95% of members voted for seven new amendments. The Board announced in January that it had rejected all but one of those amendments. The WSDA's suit is requesting a declaratory judgment that these amendments approved by an overwhelming percentage of Delta members should be considered passed. One of the Plaintiffs, Dr. Todd Irwin, stated in a press release that Delta's efforts to block proposals reflected a corporate culture of consistently putting its profits ahead of concerns about patient care.

## **Preparing Employers and Employees for the Mass. Paid Family and Medical Leave Law**

The Massachusetts Paid Family and Medical Leave Law of 2018 is going to be affecting employers and employees of all Massachusetts businesses soon, so it will be good to become prepared sooner rather than later when the first of its provisions becomes effective July 1, 2019.

While the Act's text was released in January, 2019, it is still in draft mode, and subject to revisions until the public comment period is finished on March 31, 2019. But the provisions are likely to remain largely the same, and essentially it will result in employer and employee contributions to a trust fund set up to provide paid family and medical leave starting on January 1, 2021.

The distinctions between the present Massachusetts Parental Leave Act, Massachusetts Paid Sick Leave Act, and the federal Family and Medical Leave Act must be noted. The Parental Leave Act (originally called the Massachusetts Maternity Leave Act until it was made applicable to fathers as well as mothers), provides for **unpaid** leave of up to eight weeks for new mothers and fathers to care for their newborn child. It is applicable to employers with six or more employees. The federal Family and Medical Leave Act is applicable to employers with 50 or more employees and provided up to 12 weeks of **unpaid** leave for family and medical care. The new Massachusetts Paid Family and Medical Leave Law gives employees up to \$850/week

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## The New Mass. Paid Family and Medical Leave Law

(continued from p. 1)

of **paid** leave, based on their average weekly earnings, and starting after unpaid leave of seven days is over for 12 weeks of family leave to care for family members or to bond with newborn children. Notice that the Massachusetts Paid Sick Leave Act already allows paid earned sick leave up to 40 hours maximum per calendar year, which can be used for that unpaid initial time period if it is a sickness or injury related leave. Employees may take up to 20 weeks if the leave is for their own serious medical condition and up to 26 weeks for combined family and medical leave. The benefits start being paid out on January 1, 2021, after the trust fund for contributions, which start on July 1, 2019, builds

up enough money for the payments to be subsidized.

Who is paying for these benefits? Employers **and** employees both contribute a share of a .63% payroll deduction to make up the trust fund starting July 1, 2019 that makes the payments (under the new Department of Family and Medical Leave). Here is where it becomes tricky. .52% of that deduction is paid for medical benefits and .11% is paid for family leave benefits. To add to the complexity, employers can deduct up to 40% of medical leave benefit from the .63% share from their employees' wages every payroll period. Employers can deduct up to 100% of the family leave benefit from their employees' wages. What does that mean in practical terms? For every \$1,000 of wages, employers will be paying \$3.12 for their contribution, and employees will be paying \$3.18. Employ-

ers with under 25 employees **will not** need to make an employer contribution.

The new Mass. law also covers **independent contractors** if they make up more than 50% of the employer's work force, and **former employees** if they meet the financial eligibility test at the time of separation (having earned at least \$4,700 over the last 12 months) and their employment ended within 26 weeks of the start of leave.

Explaining the intricacies of the law to employees and employers is going to be a task until they get used to both the contributions and benefits aspects, but paid leave may become a fixture of the future in the workplace, with Massachusetts being one of the first states to try it. The law has been enacted and passed into law, and only minor changes, if any, would be put into it before the contributions from employers and employees start being deducted from paychecks.

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## Prison Head Says Inmates at Womens' Prisons Resort to Pulling Own Teeth

Leann Bertsch, head of the North Dakota Department of Corrections is complaining publicly about conditions at womens' prisons that have prompted women inmates to pull their own teeth because of lack of access to dental care. Bertsch said that the North Dakota legislature has voted to study the issue instead of voting on Governor Doug Burgum's proposal to move women prisoners from the Dakota Women's Correctional and Rehabilitation Center to another facility where better care could be possible. She said that conditions are so bad that 8th Amendment issues prohibiting cruel and unusual punishment would be likely to draw a lawsuit unless changes are made. In the committee hearing on the Governor's proposal, one former woman inmate testified that the waiting list for dental care was so long that she was in so much pain she had to pull her own tooth. Bertsch made the comments in a podcast interview with Plain Talk, a North Dakota media forum.

## Fall River Man Causes Mercury Poisoning by Melting Down Amalgam Fillings

A 51 year old Fall River man who melted down a bag full of amalgam fillings obtained from his dentist uncle, thinking they were silver, caused at least two persons in his apartment building to suffer mercury poisoning and be hospitalized and killing pets exposed to the fumes. The Fall River fire department said they were notified by the man's girlfriend that he was acting strangely and that three pets had died during the incident. The man was hospitalized in critical condition as well as a 17 year old woman, and the apartment was declared uninhabitable when the hazmat team investigated the situation. The situation occurred at 108 Hamlet St., Fall River and all residents of the building were tested for mercury when the air was determined to be toxic. The man's girlfriend said that they had been experiencing money problems and had melted down the amalgam thinking he would be able to recoup money by selling the silver he thought was in the fillings, but was admitted to the hospital, initially for what was thought to be pneumonia. After being told by the man's sister that there was no such thing as liquid silver in fillings, she realized it was mercury and called the hospital and her landlord, resulting in the response by the hazmat team.

## Woman With Mental Age of 2 Fined for Receiving Free Dental Care

As part of 1.4 million patients penalized for receiving free dental care from the British National Health Service, a 19 year old woman with the mental age of two was fined 100 pounds for obtaining a free dental checkup, with a threat of additional penalties if the fine were not paid immediately. Aimee Morrow receives 24 hour care and received the checkup from the NHS free of charge, but was included in the penalty assessment policy along with numerous other disabled and vulnerable patients who are now being viewed as wrongful targets of the program. The National Audit Office is now investigating the practice.

**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.**

## **Dentists May Be Eligible for Part of \$80 Million Settlement with Schein, Patterson and Benco**

The American Dental Association has invited dentists who purchased dental supplies from Henry Schein, Inc., Patterson Companies, Inc. or Benco Dental Supply Company between August 31, 2008 to March 31, 2016 to call to determine their eligibility to receive part of a \$80 million anti-trust settlement reached with those companies. The three companies were part of a lawsuit alleging agreements between them not to compete on prices for dental products. The dental supplies and equipment which may be considered in awarding a pro rata share of the award include gloves, hand instruments, face masks, toothbrushes, anesthetic solutions, imaging devices, dental chairs, CAD/CAM systems, among other products. The final approval of the settlement is due for a hearing on May 22nd in the U.S. District Court for Eastern New York. A claim form will become available after that, but for more information on the settlement, there has

web site set up at DentalSuppliesAnti-TrustClassAction.com and a phone number is available at 1-844-367-8807. September 19, 2019 is the deadline to file a claim for those who receive a claim form in the mail.

## **Oral Surgeon Arrested for Four Sexual Assaults of Patients Still Holds Active License**

A North Carolina oral surgeon who was arrested by police after four patients accused him of sexual assault continues to have an active license and would be able to treat patients with supervision while an investigation by the North Carolina Board of Dental Examiners is pending. 55 year old Dr. Michael Hasson of Wilmington Oral Surgery remains free on \$800,000 bond after being charged with sexual assaults on a 19 year old, a 21 year old, a 17 year old and a 22 year old while they were under anesthesia and, according to the warrants were "physically helpless" at the time. The North Carolina Board of Dental Examiners stated that it is planning to speak to Hasson and the complainants as the investigation progresses.

## **"Operation Extraction" Nabs Couple Treating Undocumented Immigrants Without Licenses**

An investigation nicknamed "Operation Extraction" has resulted in the arrest of a couple by the North Port, Florida police and the Florida Department of Health and Human Services for practicing dentistry without a license out of their basement. Enrique Sanabria Gravier, 48, and his wife Adriana Gutierrez Hoyos, 47 were charged with practicing dentistry without a license mostly on undocumented immigrants, including doing extractions, and placing crowns and braces. The patients were all Hispanic speaking and had no medical insurance. The business was called Enrique Dentistry, and undercover investigators filmed and recorded the scheme by booking an appointment by phone.

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

## **Dentists Traded Dental Work for Drugs, Prescribed Unnecessary Amounts**

Following an investigation by the Drug Enforcement Administration two Virginia dentists have had their licenses suspended for allegedly prescribing unnecessary amounts of narcotics, and in at least one instance trading dental work for a patient filling pain prescriptions for one of the dentists. Dr. Gary Hartman's license was suspended by the Virginia Board of Dentistry after the investigation revealed 22 instances of patients who had unnecessary prescriptions filled for them, including on patient who died from an overdose of ethanol, cocaine and hydrocone after having more than 4,000 hydrocone prescriptions filled by him. In another instance a patient claims that Hartman performed dental work for her in exchange for filling prescriptions for his use. The DEA's drug test of Hartman at a raid on his office found a positive result for amphetamines, opioids

and marijuana. Dr. Arnold Berger, whose office is only about a mile away from Hartman's in Virginia Beach, was also investigated, and was found to have allegedly prescribed drugs not needed for dental treatment to drug abusers. The larger office Berger was working with is still treating patients while Berger's license hearing is pending. Hartman's hearing before the Virginia Board of Dentistry is scheduled for May 10th.

## **After \$236M Medicaid Fraud Settlement Company Gets Indiana State Contract for \$232M**

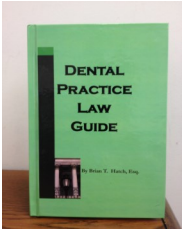
Two days after Conduent, Inc. paid out \$236 Million to the state of Texas in a settlement involving inappropriate billing and approval of unnecessary orthodontic services for children, the company was awarded a \$232 Million 4 year contract by the state of Indiana to help with screening, scheduling, initial case processing and data collection of Indiana residents seeking

Medicaid benefits. The fraud settlement also involved the Xerox Corporation and was prosecuted by the Texas Attorney General's office for a number of years before the settlement. It was the largest settlement amount for Medicaid fraud in Texas history. Conduent stated that it had different ownership under predecessor Xerox, which spun off the company as an independent, publicly traded company in 2017. The contract was part of a continuation of an agreement in place for 10 years with the state of Indiana, and was as a result of a competitive bidding process among three companies, according to the Indiana Family and Social Services Administration. Jim Gavin, a spokesman for the FSSA, stated that "The services provided by Conduent in Texas are not the same as those in the scope of Indiana's contract." Conduent's role in Texas was to evaluate applications for Medicaid dental treatment, and it untrained workers to process the applications with just superficial reviews of dental records to make sure the treatment was medically necessary.

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