

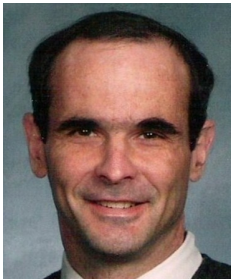
Dental Practice Legal Update

May, 2018

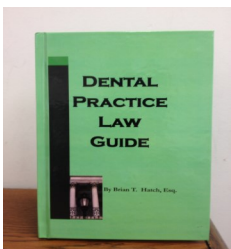
Volume 15 Issue 5

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

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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



Dental Therapist Bill Supported by Mass Dental Society

In what has been an intense battle between legislators regarding the creation of a new dental therapist designation, the Massachusetts Dental Society is now supporting a bill that would allow those new mid level providers with appropriate training to provide dental care to Massachusetts residents. On April 24th, the bill, sponsored by Senate President Harriette Chandler passed a major hurdle of the approval of a Joint Committee on Public Health, and would be submitted to the legislature eventually for a vote sometime before the end of the session on July 31st. Dental therapists would have to graduate from an accredited program and complete 2,500 hours, or about two years, of practice under the direct supervision of a dentist. After that training a dental therapist would be able to provide certain dental care, such as oral health screenings, mouthguard fabrications and radiograph readings, under general supervision of an off-site dentist. Other more complicated procedures, such as non-surgical tooth extractions, placement of a tooth crown or cappings would require on-site supervision of a licensed dentist. Dental therapists would be required to have a "patient panel" consisting of at least 50% patients from underserved populations, which was a main focus of the bill. Massachusetts Dental Society President Dr. David Lustbader said that the compromise bill "allows for a comprehensive approach to improving overall dental care for underserved populations " by trained providers.

Increasing the Value of Your Practice Before You Retire

The goodwill generated by many years of practicing dentistry in one practice can be a valuable asset for an owner dentist to count on when planning for retirement. The key to preserving that value to get the most out of the transition takes planning and foresight. Start five years or so before an intended retirement age to build the value of your practice in preparation for an eventual sale.

Remember that in valuing a practice, almost all experts heavily weigh the last year's revenues and profitability the most, usually about 3 times as much as 2 years before that. So, don't wait until you're starting to cut back on hours before preparing for the sale. Some dentists make the mistake of taking more time out for vacations as they approach retirement age. If the vacation is an extended one, make sure to keep the office open and arrange for someone to fill in to keep the production and revenues going during the absence of the owner. Keep in mind that age affects us all, and the energy required to practice full-time at a demanding occupation such as dentistry may decrease quickly as one ages.

Hiring associates to fill out hours and increase the patient base is a smart investment. Make sure that each associate hired is a good fit for the office, and if possible, find a good young dentist with aspirations of practice ownership at some time. Statements about buyout possibilities in associate agreements can solidify that relationship and make the associate more enthusiastic about helping build the goodwill of the practice and a loyal

(continued on page 2)

Increasing the Value of Your Practice Before You Retire (continued from p. 1)

patient base. Payment by collections instead of by the hour or per diem also can get associates more involved in the growth of practice revenues. Get a good non-competition agreement put into the associate agreement as well, so that dentist doesn't leave with that newly generated goodwill for another opportunity.

Not just associates, but the loyalty of other good employees is important to keep the practice thriving and attract potential buyers. Paying employees well enough to keep them for the long term, and keeping them happy to increase good relationships with your patient base is a good thing. Acquiring the latest software for running an

Hygienist Treating Patients Sues After Gas Explosion Injuries

Hygienist Gail Needham was treating a patient at the Lawrence Hovey dental offices in Portland, Oregon when a massive gas explosion about a block away occurred which shattered windows in the examination room and made her fall to the floor. She wound up with cuts to her back by the shards of glass and suffered a concussion. The explosion was triggered when Loy Pipeline Company started digging without checking to see if natural gas pipelines were located in the vicinity. The blast caused \$17.2 Million in damages to surrounding buildings and injured at least eight firefighters, police officers and residents. Needham, age 55, claims that since the 2016 accident she still has problems seeing and can't read at all on bad days, experiences ringing in her ears, has hearing loss, and suffers from headaches and post traumatic stress syndrome. She filed suit against the pipeline company for \$689,000. Loy Clark Pipeline spokesperson Andrea Blessum stated that the company's insurance company has settled or

efficient office and having employees trained to use it effectively is important also.

Modernizing the practice with new equipment to keep up with the latest technology is a part of a good strategy for increasing value of a practice. A prospective buyer always looks at the equipment age and value before estimating the worth of the practice, since otherwise, more costs would be incurred after a purchase to keep up with current dental equipment innovations.

Marketing is not something to ignore when keeping the practice valuable to a potential buyer. Keep the website looking great and up to date and emphasize the improving credentials and knowledge of the dentists and owner in the past few years. If certain types of dentistry are being emphasized more in advertising by other dentists, take note that your practice is following newer

closed 88% of the claims filed, but Needham's attorney says her claim wasn't settled yet because she has ongoing medical bills and her condition hasn't stabilized yet.

Former Reality TV Star Found Guilty of Illegal Teeth Whitening

A former British reality TV star, Chelsey Harwood has been found guilty of illegal teeth whitening after she was caught performing the service, which she advertised as "Teeth Whitening by Chelsea," by undercover policemen. Harwood starred in the reality TV show "The Only Way is Essex" and said that the teeth whitening service was conducted as a part of selling products under the brand developed by the cast of that show. She was warned that teeth whitening could not be performed legally except by a licensed dentist, but continued to advertise the services on Facebook and Instagram. She insisted she was a "demonstrator" who did not pose as a dentist, and only gave the customers a mouth guard and watched as they put a laser to their mouths. Harwood, 30, was convicted last year of fraud and served some jail time.

Dentist Sues Investigating HealthUnit for \$10 Million

Ontario dentist Dr. Joe Philip

trends.

Most importantly, keep track of profitability from year to year, since that aspect of the value of the practice is worth more than gross collections. A good dental accountant can show you how the bottom line is working out, if some expenses are higher than they should be, and file tax returns that attract future buyers when they request them in doing due diligence. Paying less taxes sometimes means showing that there is less income from year to year, so only a skilled accountant can save you on paying taxes while still showing that the value of the practice is still apparent from tax returns.

While most of us think we'll never have to retire as long as business income keeps flowing in, eventually retirement beckons after a long career of hard work. There is a tremendous return on investment of growing a practice for sale long before retirement, so get started early for the best results.

was being investigated by the Simcoe Muskoka District Health Unit (SMDHU) when the unit released on a website and through media reports that he was being investigated for a "lapse report" that might have indicated his patients were possible subjects of transmittable diseases. He was appealing the attempt by the SMDHU to contact his patients when the information, which he claims damaged his reputation groundlessly, was published. The Royal College of Dental Surgeons found no cause for the findings. Philip has subsequently filed a \$10 Million lawsuit against the SMDHU.

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 32 years and has focused on the dental industry since 1995.

Court Approves \$65 Million Settlement for Dentists in Litigation with Delta Dental

The California Dental Association (CDA) received court approval on April 30th of its \$65 Million settlement on behalf of dentists against Delta Dental initiated after a reduction of Premier Dental Plan rates reduced dentists' income. The CDA fought Delta over the rights of its member dentists under the terms of their agreements with the insurance giant, which had allowed for a reduction in fees based on an "inflationary adjustment percentage." The dentists will receive reimbursements for the amounts of the reduction. The settlement also restricted Delta's ability to make unilateral changes to provider contracts without giving 120 days notice of any changes to allow for input from dentists and distribution of information to allow them to evaluate new terms of their contracts. The rate reductions were stayed during the time of the litigation, which has been ongoing since 2013, although Delta is not prohibited from making future rate reductions.

NC Dental Board, Defeated at Supreme Court, Proposes Specialist Advertising Beyond ADA Standards

The North Carolina Dental Board, which not too long ago lost a legal battle at the U.S. Supreme Court in its attempt to restrict teeth whitening by non-dentists, is now taking the initiative in proposing to allow for advertising dental specialties beyond the American Dental Association's limited definition of what are dental specialties. The ADA currently defines dental specialties according to the completion of Commission on Dental Accreditation (CODA) accredited postgraduate programs. The proposal by the Board would expand that definition to allow for other specialties not covered by those programs but still recognized by the American Board of Dental Specialties or Royal College of Dentists of Canada or through other specialty recognition standards. The proactive decision by the NC Board follows on the heels of decisions in the 5th Circuit Court of Appeals and California federal court deeming restriction of dental specialty

advertising as an unconstitutional infringement on First Amendment free speech rights. The ADA has suggested it may reconsider its recognition standards sometime soon. Long and costly legal challenges to NC regulations and decisions will be avoided through this new approach to state regulation.

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 Boston, Hanover, Martha's Vineyard and N. Attleboro now for sale.

Mass. Dentist Sues Yelp for Recommending False Review

A Massachusetts Dentist, Dr. Arian DiNapoli, has filed suit against Yelp, Inc. for false and deceptive trade practices after it relabeled a one-star review from a patient who had failed to convince the practice to issue a falsified tax receipt "reliable" and "recommended." The complaint states that after the patient posted the review, and Yelp had determined it was "unreliable" and "not recommended" it solicited him a number of times to place advertisements. DiNapoli said that after he refused to place an ad the third time, Yelp changed the one-star review to "reliable" and "recommended." In the complaint, it was stated that Yelp then offered his competitors advertising space and continued to maintain the negative review on its website. DiNapoli claims loss of profits and clients amounting to \$373,687.50 with treble damages, and has asked for a jury trial on all counts.

Mother Attempts to Decline Use of Opioids, But Son Dies of Overdose

A Canadian dentist who had declined to prescribe opioids when starting practice 23 years ago tried to convince doctors that opioids were not the best way to treat pain during dental surgery that her son had to go through four times in 10 months. However, Dr. Rachel Staples, mother of 16 year old Elliot Eurchuk of Oak Bay, British Columbia, was not able to persuade them that they should not use opioids in his treatment plan, and Elliot eventually became addicted and used street drugs to supplement the addiction. He wound up dying from an overdose on April 20, 2018. Staples and Elliot's father, Brock Eurchuk said that they were denied information as to what drugs were in his system, and his treatment plan, when he was admitted to the hospital on February 10, 2018, because of a provincial law preventing doctors from giving information about minor's medical conditions with-

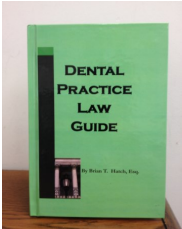
the minor's consent. Elliot's parents are now working to seek to amend that law to allow parents more control over their children's medical conditions. Meanwhile, the case is being investigated in an internal review.

Dentist Accused of Retaining Hygienist Treating HIV Positive Patient with Unsanitary Tools

The former office manager of Dr. Gregg K. Balls Palm Desert, California is suing him for discrimination and wrongful termination when she advised him to fire a hygienist who was not sanitizing instruments properly. The hygienist worked closely with Balls on numerous patients, including one who was HIV positive, but allegedly did not fire her because she agreed not to report other legal violations. The office manager, Jennifer Evans, had worked for Balls for 25 years and also said that the hygienist illegally administered anesthesia when Balls was late for appointments. Trial proceedings begin this month.

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