

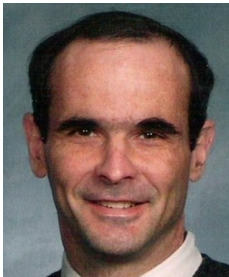
Dental Practice Legal Update

November, 2019

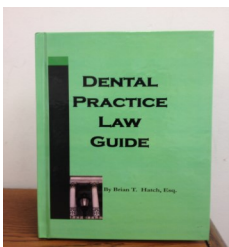
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Delta Dental Informs Patients Costs Will Increase Because of Dentists' Withdrawals

Delta Dental of Massachusetts (DDMA) has been facing significant withdrawals by dentists from its network since the decreases in reimbursements it won approval for at the Division of Insurance. In dealing with this negative impact on their significant share of the dental insurance market in Massachusetts, DDMA sent out a letter to its members who go to dentists who are withdrawing that implies that the dentists are responsible for future increased costs of their treatment. The letter states in stark terms its position that dentists themselves are responsible for the situation, by informing patients that "(y)ou can stay with your current dentist. Just keep in mind that because he or she isn't in our network at this location anymore, your costs will likely be higher." It goes on to portray those withdrawing dentists as outcasts in the dental community by stating, "The good news is that nearly every other dentist in the state is in our networks."

The Massachusetts Dental Society expressed its concern that Delta was taking punitive actions against withdrawing dentists and misleading patients into believing that their costs will increase because of those dentists' actions. MDS President Janis Moriarty, DMD pointed out that Delta's actions disallowing assignment of benefits provisions in this situation are a primary reason for any increase in costs. Moriarty

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Can You Avoid Uncollectible Receivables?

Are there unpaid balances on patient accounts after insurance payments have been made and any initial payments don't cover the final amount due for treatment? Both legal and practical complexities often result in large accounts receivables that may be difficult or next to impossible to collect. Have your office staff be aware of some of the ways to collect effectively and collection practices that aren't allowed by law.

Knowing what insurance will cover, and what the patient has to pay either through a co-pay or parts of treatment that aren't reimbursed, and making the patient aware of that is important. If a patient is coming in for an emergency procedure, or insurance coverage doesn't meet initial expectations, sometimes there are balances owed after treatment is already rendered.

Some dentists use medical or dental credit card systems run by other companies that can be issued at the time of treatment. This type of credit has been abused, however, by deceptively high interest rates that patients aren't told about or are in fine print that isn't recognized when making an immediately necessary urgent dental treatment decision. This type of credit has come under fire legally in some states with legislation and courts restricting the unfair burden it inflicts on poorer patients. Dentists and office staff must be aware of these burdens and not be caught up in a deceptive trade practice or patient that complains later that these terms were not disclosed. It is important to be knowledgeable about whether the company issuing the card has a good reputation or not.

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How to Avoid Uncollectible Receivables (from p. 1)

Dentists do come under the Fair Debt Collection Practice Act, which has a number of protections for consumers from overbearing and intrusive collectors. That Act prevents a creditor from threatening to refer a bill to a collection agency or take any other action unless it plans to do so, or has used this method before with other patients. You can't disclose to any third party, either over the phone or otherwise that you are trying to collect a debt from a patient. You cannot mark obvious signs of collections on envelopes or post cards with words like "past due" on them. You cannot call a patient who owes money before 8am or after 9pm or at work to try to collect the debt. You cannot contact the patient directly if are

contends that this type of communication to patients interferes with the doctor-patient relationship.

The assignment of benefits issue is coming up as a legislative priority among dentists in Massachusetts. The Massachusetts Dentists Alliance for Quality Care is pushing for legislation to require dental insurers to pay dentists directly if the patient agrees and does not wish to pay up front and then be reimbursed by the insurer.

DDMA has also had complaints filed by patients and dentists at the Massachusetts Division of Insurance regarding other issues having to do with audits resulting in demands for retroactive reimbursement for claims it says should not have been paid. Upon threat of being removed from the network, dentists are being forced to repay thousands of dollars in reimbursements which had already been reviewed and paid as correct claims for up to two years prior to the new demands. Dentists have withdrawn from the network, have filed complaints with the DOI, or have considered legal action to counter what has been seen as another punitive

aware that he or she is represented by counsel.

The creation of an affordable payment schedule with a written agreement can ease the burden of paying off large balances immediately. Having the patient sign the agreement preserves the rights of the dental office.

An attorney's letter is a possibility that doesn't have to be intimidating if worded correctly and the attorney makes it clear that the purpose of the letter is to resolve the dispute amicably and without resort to litigation. Litigation can be mentioned as a final resort, but only after the patient intentionally refuses to cooperate.

One way of ensuring that patients who are lagging behind in making payments don't become lackadaisical in meeting payment deadlines is to have agreements setting out interest rates

measure designed to increase the bottom line of a company which just recently was approved to transfer from non-profit to profit making corporate status in Massachusetts. Dentists' legal complaints are centered not only around possible violations of unfair and deceptive trade practice laws and other legal causes of actions, but on a more severe allegation of interference with the doctor-patient relationship. Dentists are being coerced into changing their treatment plans, which are based on years of education and experience, in order to satisfy statistical models of what an insurer feels is necessary dental treatment. Patients of the dentists who have claims which are now challenged retroactively and face liability for withdrawn payments have also filed complaints at the DOI because of the interference with the doctor-patient relationship they have trusted to provide the best quality care based on their dentist's professional judgment.

By Claiming Dental Emergency Rapper Becomes Liable for \$6M Additional Damages

Game, the rapper whose real name is Jayceon Taylor, was handed a additional punitive penalty of \$6 Million added onto a

which will kick in after a defined period after the payment is due. Payment agreements should have this language clearly noting this to make sure a patient doesn't claim it was unfairly or deceptively imposed without prior consent. Waiving interest if regular payments are made allows a patient to get back on schedule.

There are collection agencies that specialize in the medical field that often can take what seems to be an uncollectible amount and get at least a reasonable amount back. The agencies are knowledgeable in the laws and practical ways of collecting debts.

The aging of accounts receivables is looked at in practice valuations. Keeping on top of a practice's receivables shows the efficiency of a practice and makes it more marketable, so it is wise to make sure your office staff keeps up with good collections practices.

judgment for \$1.13 Million in a sexual assault liability suit against him after judges found out he may have concocted a story about a dental emergency to get out of attending the trial. Game tried to delay the trial on several occasions and eventually made a last minute call to the Court to ask that he not have to attend because had had two emergency root canals. One of the judges responsible for the verdict called to confirm that an endodontist had performed surgery, but was skeptical of the emergency nature of it when she saw subsequent social media postings made on the evening just before the procedure and the trial. Judge Diane Sykes said that "(t)he photos depicted Taylor smoking something in a dark room under pink neon lights at 2:44am on Monday, November 14th." Sykes said that "(i)t remained unclear whether Taylor's dental issue was a previously known condition or a sudden-onset emergency-a material fact in evaluating whether this was a good-faith excuse for skipping trial or just a ruse."

Employment Manuals, customized for the dental industry and your office, are available from Hatch Legal Group. brianhatch@hatchlawoffices.com

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California's New Law to Restrict Teledentistry

California's Governor Gavin Newsom has signed a new law which gives consumers more protections when using teledentistry services for orthodontic treatment as well as other dentistry. The new law requires dentists who move teeth to review x-rays first, and in effect restricts the new, and exponentially growing, model used by SmileDirect Club to allow for do it yourself online impression kits or 3-D images taken at a retail store. In addition the law gives consumers an ability to file complaints with the California Dental Board about treatment in spite of having signed non-disclosure agreements. This part of the law also is likely to impact SmileDirect Club, considering it has been reported that over 1,200 Better Business Bureau complaints have been filed against it in five years. Other parts of the law give more regulatory authority to the California Dental Board, which has adamantly opposed the SmileDirect Club model as dangerous to patient care and safety.

SmileDirect Club, which has

North Attleboro Not Getting Full Fluoridation Despite Vote

North Attleboro, Massachusetts residents are getting reduced levels of fluoride in their drinking water, or none at all, despite a hotly debated vote in favor of fluoridation in 2000. The town water department admitted in a legal ad that fluoride was inserted into water from the Whiting Street water treatment plant, but no other plants received the fluoride supplements. The resulting dilution of the overall levels of fluoride in the water supply of the town became known when the Anne Marie Fleming, the North Attleboro health department director, reviewed a state water quality report in August. The problem has apparently existed since 2011, and Town Manager Michael Gallagher said other sources of the water supply other than the larger Whiting Street facility are not equipped to insert fluoride into the water supply. He said he will look into the possibility of construction of new structures to

have had a rough opening on the public stock market recently, saw its stock prices fall 13% on the day the law was signed. The company is now suing the California Dental Board for damaging its business and harassment during its inspections of local offices in California, as well as for other alleged restraints on its business activities.

\$4M Libel Suit Against On-line Reviewing Patient to Decide Opinion-Defamatory False Statement Standard

The burden for a dentist to meet in alleging that negative on-line reviews are defamatory is a high one. Where is the line drawn by a court when a patient alleges the reviews are constitutionally protected opinion but the dentist alleges false statements were made intentionally to damage the dentists' reputation?

In an Illinois court, Dr. Robert Goldberg has filed a \$1.4 Million lawsuit for defamation against dental patient Katherine Alberti, who posted hundreds of negative on-line reviews about Goldberg's practice. He says

that the reviews intentionally made false allegations that someone tried to break into her home to take information from her computer, that he had video cameras in his office, that he threatened her, that he recommended unnecessary treatments, and other statements he says are false. Alberti has asked to have Goldberg's lawsuit dismissed because her reviews did not contain key elements of crimes that Goldberg was supposedly responsible for, and they didn't show an intent to state that Goldberg had a "lack of professional ability." She says her review states it was based on her "experience" and not any claim of professional authority, and that the statements were the opinion of a "confused or frustrated patient describing her own 'experience,' 'perceptions' and 'interpretations of information.'" Goldberg must reply to Alberti's Motion to Dismiss the Complaint by November 20, 2019.

Attorney Brian T. Hatch has practiced law in Massachusetts since 1985 and has concentrated on the dental industry for 24 years.

improve the process. In the meantime, residents are advised in the town legal ad to consult with their dentists about the effects of how the water is treated in their area. Both residents and town officials were surprised by the announcement and were concerned they hadn't been informed before now.

New Jersey Wife and Husband Awarded \$1.33M for Injury to Jaw

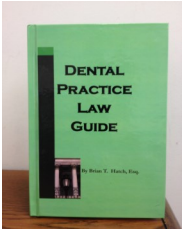
After a four hour surgery in what normally would be a one hour procedure, the injuries to the jawbone of a Mendham, New Jersey woman, Kathleen Seergy, resulted in a lawsuit by her and her husband, Michael Seergy, for dental malpractice. Dr. Frank Ricker had planned to perform a simple extraction in preparation for an implant, but after an extended period in surgery, the procedure was stopped with root fragments left in the jaw. After the surgery Seergy suffered a spontaneous jaw fracture while eating a piece of bread in the area

of the extraction. Seergy claimed she had to undergo nerve-regeneration surgery, and continues to experience pain, numbness, tingling, loss of hot and cold sensation and waves of electric shock from her center chin to her right cheek. At trial, an expert testified that her jaw could no longer hold an implant. A jury awarded Kathleen Seergy \$1.1 Million and Michael Seergy \$233,000, which is the third largest dental malpractice award in state history. The lawyer for Frank Ricker plans to appeal based on a number of alleged errors by the trial judge and ask for a new trial.

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.

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