

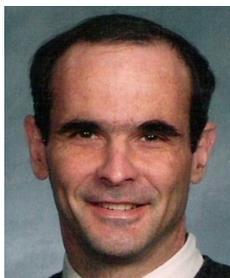
Dental Practice Legal Update

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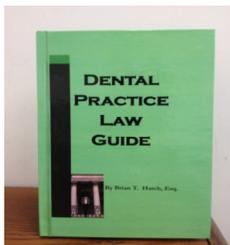
Dental Practice Legal Update is published by Attorney Brian Hatch as a courtesy to dental practices in Massachusetts by:

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Orthodontist's Suit On ACA Employer Mandate Goes to Appeals Court

Florida orthodontist Dr. Larry Kawa expended significant hours attempting to conform his practice to provisions of the Affordable Care Act, and a delay of the employer mandate under the law by the Obama administration until 2016 caused him enough costs so that he filed a lawsuit for damages under an "unlawful taking" argument. The suit was dismissed by a Florida federal district court because of his supposed lack of standing as an employer to challenge the action. However, since in a similar suit in Texas a court allowed another plaintiff standing to sue the administration under a separation of powers argument pitting the Obama administration's powers versus those of Congress, the 11th Circuit Court of Appeals decided to hear oral arguments on the case.

The decision by the court to hear oral arguments came on the same day as a U.S. House rules committee held a hearing on a proposed separation of powers lawsuit, and thus the potential for the suit to reach the courts in that situation eventually anyway may have resulted in the Court's agreement to accept arguments on Kawa's case. Oral arguments should take place sometime in October.

Kawa claims that compliance costs caused by the uncertainty over when the mandate would take effect greatly disrupted his practice and required him to spend significant hours and money meeting with insurance agents and attorneys over his required response.

Strategies for Saving on Taxes With Employee Benefit Plans

As a small business owner and an employer, dentists often can take advantage of compensation plans that not only supply their employees valuable retirement savings plans, but save them money through providing for their own retirement. The variety of plans available makes it difficult to find the right type of strategy to meet the goals of both the employer and the employee. However, a brief description some of the possibilities can help you make the right decision.

Dentists are generally small employers with less than 100 employees, so some of the 401K plans and other Defined Contribution and Defined Benefit plans that work for larger companies may not be the best fit for the smaller practice. The implementation and reporting requirements along with all the federal rules and regulations governing the various types of plans can be a challenge for the smaller employer.

There are a few types of defined contribution benefit plans that are specifically designed to help the small employer establish savings accounts that will offer tax savings in the near future, provide benefits for the employer's retirement, as well as allow for employee contributions for their own retirement accounts. To be able to offer employees an asset that some have not even considered in the beginning of their work career that is in addition to the regular wages or salary can attract quality employees who realize the value of an employer contribution

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Strategies for Saving on Taxes with Employee Benefit Plans (continued)

to workplace benefits. Just the fact that the small business owner can call himself or herself an employer may allow for owner to realize retirement benefits and tax savings that a savings account cannot achieve on its own.

One plan that is popular for those business owners who have a small number or no employees is a SEP IRA. The owner can contribute up to 25% of the owner-employee's salary or a maximum of \$52,000 in 2014. The money contributed is a direct deduction from an annual tax return for the owner. It is self-funded by employers so that they contribute equally to all employees, though employees can also contribute to their SEP. It can also be a

form of profit-sharing for an owner to offer it as a compensation benefit for a number of the partners in the company. The costs to implement an SEP are minimal, as are any ongoing fees to keep it going. There is no required annual funding requirement for SEPs. The SEP is the plan that allows owners the largest deduction for their own retirement strategy.

SIMPLE IRAs are another way for small employers to take advantage of the tax benefits of ongoing contributions to retirement plans as deductible expenses. Contributions are not all employer funded but allow matching funds to be made available to employees who make their own contributions to individual retirement accounts. The plans are for those employers with less than 100 employees and have no reporting requirements or maintenance fees. Employees can save up to \$12,000 a year through these

accounts, or \$14,500 a year if they are at least 50 years old. The part of the plans that make it attractive to both employer and employee is that the employer can offer a matching contribution of up to 3% of the employee's salary. The employer and employee pay no payroll taxes or income taxes on these contributions, so it is compensation without that big chunk going to the IRS and other tax collectors, a situation all of us enjoy!

Even though it is actually very easy and involves minimal costs to set up the plans oriented towards tax savings for small employers specifically, it is surprising that so few small businesses actually take advantage of employee retirement accounts. In fact, the SBA has determined that almost 72% of employees of small companies have no retirement plans available at all.

Source: Liam Timmons, Timmons Wealth Management, Attleboro, MA

Dutch Dentist Sought for Mutilation of Patients Caught

A Dutch dentist on the run from authorities in France and sought for mutilating a number of his patients has been arrested in New Brunswick, Canada, according to local police there, and is being held by immigration officials. Dr. Mark van Nierop had been a fugitive from justice in France since December of last year when he was accused of mutilating patients and fraud after he supposedly installed poorly placed implants, left parts of dental tools in patients' gums, and did extractions of healthy teeth. Allegedly 120 patients were harmed during van Nierop's procedures, and at least 60 of them suffered serious injuries. He is next subject to a quasi-judicial detention review hearing in Nova Scotia.

\$2.8 Million Awarded Patient of Drug-Addicted Dentist

A patient who sued a dentist and the dental practice employing him for malpractice was recently awarded \$2.8 Million in a DeKalb County Georgia court, after the details of the practice's hiring of the dentist despite positive drug tests for valium were

revealed. Dr. James Cauley had previously overdosed on fentanyl and had been using nitrous oxide intended for patients. The malpractice he had been accused of included the negligent placement of over 12 crowns and intentionally proposing unnecessary treatment on healthy teeth. Cauley was also accused of patient abandonment, and his employer, Coast Dental, was accused of not completing the treatment but keeping over \$20,000 in patient payments which did not appear in the practice book-keeping. Cauley's drug use was not admitted as evidence in the first part of the trial, which resulted in the jury verdict on the dental malpractice against the practice. Cauley was dismissed from the case before trial after settling with the patient, Haley Buice, a 33 year old mother of four.

California Malpractice Claims Often Difficult to Access

A reporter researching a dental malpractice case of a California dentist also came across such red tape and hidden facts about malpractice of other dentists that she wound up reporting on the defects in the California dental board/court system that prevents the public from accessing information about those cases. Rachel Cook, who reported for the Bakersfield Californian, was looking into the malpractice history of Dr. Robert Tupac, whose poor dental treatment was documented over three decades

of complaints, suits and other actions taken against him by former patients.

Cook ran across rules used by the California Dental Board which made complaints against dentists nearly impossible to find by a prospective patient searching the credentials of a dentist like Tupac. Complaint files are not accessible by the public and dentists are not required to notify patients that they have been placed on probation by the Board.

In addition, in her article on Tupac entitled "Dental Dangers" Cook outlines the complexities in the California court system that make it difficult to access court records of malpractice or other suits against dentists. Nondisclosure agreements signed by patients hampered her discovery of the decades long abuse of patients during which Tupac continued to practice. New laws are now being proposed to require greater disclosure by dentists of their past disciplinary records.

Looking to Buy or Sell a Dental Practice? Call Hatch Legal Group for legal and other services for either the buyer or the seller. 508-222-6400, hatchlegal-group.com

University Clinic Faces Retaliation for Reporting Harassment Charges

A hygienist working at the Portland (Oregon) State University Dental Clinic has filed a \$1.3M lawsuit against the University for firing her in retaliation for reporting sexual harassment. Valarie Austin based her claim on comments she said a dentist at the clinic, Dr. Tuan Truong made towards her that were sexually suggestive as well as comments she said he made about the size of female patients' breasts. Truong had been told as a result of a prior investigation into a possible violation of the University's consensual relationship policy that his actions constituted "unprofessional behavior." Trong and Ausin had dated for about six months in 2011, but Austin said he started harassing her after they broke up. She said the clinic started the process to get her fired after she filed the complaint with the clinic and also after she gave the Oregon Board of Dentistry names of patients she thought had been billed for services they never received or double billed.

Oregon Dentist Sued for Sleeping on the Job

A patient of Dr. Paul B. Kim is now starting a \$200,000 lawsuit against him for allegedly sleeping around the same time as making decisions about the proper anesthetic to use during her dental treatment. Melyn Guernsey said that she was having a tooth extraction and was in pain when she overheard a receptionist and dental assistant talking about Kim sleeping at two different times during her treatment, once to tell him to "wake up" and announcing that his next patient had arrived, and the second time, after taking her x-rays, saying "Nap time is over. Room 1 is ready for X-rays." When the dentist was preparing for the extraction, he was told that her blood pressure was high, and supposedly told his assistant to take it again in 15 minutes. During that 15 minutes Guernsey claims she heard the assistant say "Wake up. Room 2 is ready." Eventually when she was administered an anesthetic she had a negative reaction to epinephrine and had to be taken to the local emergency room with breathing

problems. Guernsey's suit claims she suffered repeated panic attacks following the visit and needed to seek professional help. The complaint asks for \$10,000 in damages for dental treatment and counseling and \$190,000 for emotional distress.

Delta Dental Gives Funds for Dental Equipment for Wellness Clinic

In an effort to promote a wellness program conducted by the University of Arkansas for Medical Sciences Delta Dental has donated \$15,000 for dental equipment to enable student dentists and dental hygienists to perform dental treatment such as simple fillings and extractions. The 12th Street Health and Wellness Center in Little Rock, Arkansas had previously done oral health screenings. Now the additional dental services will be available to community under the supervision of licensed dentists. The Wellness Center was organized by students in an effort to combine community service with on-the-job training for students. Equipment purchased includes intraoral X-ray equipment, handpieces and a variety of other dental instruments.

New York AG Cracks Down on Unlicensed Dentists

The New York Attorney General's Office has announced that it is cracking down on unlicensed dentists in the New York City area, beginning with the arrests of four unlicensed individuals who were witnessed by undercover agents practicing dentistry in Brooklyn. The Medicaid Fraud and Control Unit (MFCU) conducted an undercover operation to reveal that Konstantin Shtrambrand, Ilya Zolotar, Sergey Tolokolnikov, and Hakob Gahnapatyan were posing as dentists performing dental work such as drilling patient's teeth. All four were charged with practicing dentistry without a license, which is a felony under New York State law carrying a penalty of up to 4 years of prison time. The MFCU is also undertaking an investigation into the Defendants' employers, Dr. Grigory Shyknevsky and his son Dr. Josph Grigory Shyknevsky of J.S. Atlantic Dental, P.C.

New HIPAA Business Associate Agreements Must be in Effect as of September 22nd

Under the new 2013 HIPAA Omnibus legislation rules, by September 22, 2014 new Business Associate Agreements must be in place instead of old agreements signed before January 25, 2013. The new rules updated Business Associate responsibilities so that now Business Associates have the specific responsibilities of obeying HIPAA rules in the same way as dentists or other health providers do.

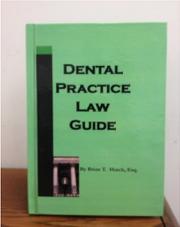
This deadline is important for dentists to realize because enforcement of the new HIPAA/HITECH regulations is increasing rapidly, with fines of up to \$1.5 million which can be levied for violations. Dentists who do not have agreements with business associates technically cannot transmit or disclose protected health information (PHI) to these companies or they will be considered to have committed a HIPAA breach themselves.

Generic office employee manuals, or no manual at all, risks non-compliance with state and federal regulations, with resulting penalties. Call 508-222-6400 or hatchlegalgroup.com

The 2014 HIPAA Audits are now being scheduled. Be prepared to meet the requirements for new documentation, training of compliance officers and staff, and policies and procedures that have been put in place as of September, 2013. Call 508-222-6400 or contact hatchlegalgroup.com for CE eligible training including new HIPAA documents and a Privacy Officer Compliance Guide©.

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