

Dental Fraud: Dentist Faces 3,974 Years in Prison if Convicted!



(November 30, 2017): Earlier this year, Attorney General Jeff Sessions announced the largest ever health care fraud enforcement action by the government's Medicare Fraud Strike Force. The fraud "take down" charged 412 defendants across 41 federal districts, including 115 doctors, nurses and other licensed medical professionals, for their alleged participation in health care fraud schemes involving approximately \$1.3 billion in false billings. *Of those charged, over 120 defendants were charged for their roles in prescribing and distributing opioids and other dangerous narcotics.* The charges aggressively targeted schemes billing Medicare, Medicaid, and TRICARE for medically unnecessary prescription drugs and compounded medications that often were never even purchased and / or distributed to beneficiaries. *The charges also involved individuals contributing to the opioid epidemic, with a particular focus on medical professionals involved in the unlawful distribution of opioids and other prescription narcotics.* While most of the medical professionals charged with controlled substance violations have traditionally been physicians, nurse practitioners and physician assistants, both state and federal law enforcement authorities are also including dental professionals in their audits of opioid and controlled substance prescribing practices. A recent dental fraud case out of the State of Pennsylvania investigated by agents of the Federal Bureau of Investigation and the Drug Enforcement Administration illustrates how serious federal law enforcement agents and prosecutors are viewing these cases.

I. Dental Fraud Indictment Charging Pittsburg Dentist:

In early November 2017, the U.S. Attorney's Office for the Western District of Pennsylvania announced that a federal grand jury had issued a superseding dental fraud indictment charging a Pittsburgh dentist on a variety of controlled substance and related charges. As the superseding dental fraud indictment reflects, the government charged the dentist with:

- Distribution of Hydrocodone and Oxycodone, Schedule II and III controlled substances, outside the usual course of professional practice;
- Using or Maintaining a Drug-Involved Premises;
- Health Care Fraud; and
- Omitting Material Information from Required Reports, Records, and Other Documents.

II. Overview of the Dental Fraud Charges Allegedly Committed:

According to the 200-count superseding dental fraud indictment, from 2012 through 2015, the dentist allegedly distributed Hydrocodone and/or Oxycodone, Schedule II and III controlled substances, on 196 occasions, **“outside the usual course of professional practice and not for a legitimate medical purpose.”** The superseding indictment also alleges that the defendant **“knowingly and intentionally used and maintained his dental office for the purpose of unlawfully distributing controlled substances.”** Finally, the superseding indictment alleges that the defendant committed health care fraud (in this case, dental fraud), and supposedly omitted material information from an application for a Drug Enforcement Agency registration number.

Unlike most dentists, the defendant was a participating provider in the Medicare program.^[1]^[2] The alleged dental fraud supposedly resulted in improper billings and losses to the Medicare, Medicaid, and the managed care organizations associated with each program. The wrongful conduct also resulted in improper billings and losses to UPMC’s health plan.

III. Potential Sentence and Fine the Dentist Now Faces:

Here’s where the case appears to leave the rails. According to the Press Release issued by the U.S. Attorney’s Office, if the defendant is convicted of the charges, the law provides for:

- A maximum total sentence on all counts of incarceration of up to **3,974 years**;^[3]
- A fine of **\$197,500,000**; and
- A term of supervised release of **598 years**, or all.

Yes, that’s right, the government is seeking up to 4,000 years of prison time for this dentist. Notably, 4,000 years ago, Stonehenge was founded and the Bronze Age was just beginning in China. One can only imagine what the world will be like 4,000 years from now, but one thing is for sure – we will all be long gone!

IV. What are the Requirements for Prescribing and Documenting Controlled Substances?

A. Prescribing, Administering and Dispensing Controlled Substances in Pennsylvania.

Over the last six months, a significant portion of the criminal health care fraud cases brought against providers have been based, at least in part, on improper opioid prescribing practices. A vast majority of these opioid cases have alleged that one or more defendants wrote **“Prescriptions of oxycodone that were outside of usual medical practice and without a legitimate medical purpose.”** While every case is different, one point we have repeatedly noted is that dental records often fail to comply with applicable State Dental Practice Act requirements.

For instance, in Pennsylvania, under Subchapter C, [Section 33.207](#), when prescribing, administering or dispensing controlled substances, a dentist is required to comply with the following minimum standards under **Section 33.207(a)(1)**:

“(1) Scope of authority. A dentist may prescribe, administer or dispense a controlled substance only:

(i) In good faith in the course of the dentist’s professional practice.

(ii) Within the scope of the dentist-patient relationship.

(iii) In accordance with treatment principles accepted by a responsible segment of the profession.”

Before a dentist initially prescribes, administers or dispenses a controlled substance to a patient, a proper dental examination and medical history of the patient must be conducted and documented.

As set out under **Section 33.207(a)(2)**, the dental examination and medical history conducted must be sufficiently thorough ***“to justify the prescription, administration or dispensation of the controlled substance.”*** Applicable regulations require that:

“the examination shall focus on the patient’s dental problems, and the resulting diagnosis shall relate to the patient’s specific complaint. The patient’s dental record shall contain written evidence of the examination and medical history.”

Pursuant to **Section 33.207(a)(3)**, Pennsylvania licensed dentists are required to keep the following records when prescribing, administering or dispensing a controlled substance to a patient that include an entry in the patient’s dental record that contains:

“(A) The name, quantity and strength of the controlled substance.

(B) The directions for use.

(C) The date of issuance.

(D) The condition for which the controlled substance was issued.”

See Section 33.207(a)(3)(i).

Pennsylvania regulations further require that a patient’s dental record contains entries related to

the to the issuance of controlled substances, **“they shall be retained by the dentist for a minimum of 5 years following the date of the last entry of any kind in the record.” Section 33.207(a)(3)(ii).**

B. Preparing, Maintaining and Retaining Patient Dental Records in Pennsylvania.

While specific record-keeping requirements are expressly specified by regulation when dealing with controlled substances, that does not absolve a Pennsylvania from his or her basic record-keeping obligations under [Section 33.209](#). Pennsylvania regulations require the following:

“(a) A dentist shall maintain a dental record for each patient which accurately, legibly and completely reflects the evaluation and treatment of the patient. A patient dental record shall be prepared and maintained regardless of whether treatment is actually rendered or whether a fee is charged. The record shall include, at a minimum, the following:

(1) The name and address of the patient and, if the patient is a minor, the name of the patient’s parents or legal guardian.

(2) The date of each patient visit.

(3) A description of the patient’s complaint, symptoms and diagnosis.

(4) A description of the treatment or service rendered at each visit and the identity of the person rendering it.

(5) Information as required in §33.208 (relating to prescribing, administering and dispensing medications) and this section with regard to controlled substances or other medications prescribed, administered or dispensed.

(6) The date and type of radiographs taken and orthodontic models made, as well as the radiographs and models themselves. Notwithstanding this requirement, the dentist may release orthodontic models to the patient. This transaction shall be memorialized on a form which is signed by the patient. The signed form shall become part of the patient’s record.

(7) Information with regard to the administration of local anesthesia, nitrous oxide/oxygen analgesia, conscious sedation, deep sedation or general anesthesia. This shall include results of the preanesthesia physical evaluation, medical history and anesthesia procedures utilized.

(8) The date of each entry into the record and the identity of the person providing the service if not the dentist of record—for example, dental hygienist, expanded function dental assistant, dental assistant, and the like.

(b) A patient dental record shall be retained by a dentist for a minimum of 5 years from the date of the last dental entry.

(c) Within 30 days of receipt of a written request from a patient or a patient's parents or legal guardian if the patient is a minor, an exact copy of the patient's written dental record, along with copies of radiographs and orthodontic models, if requested, shall be furnished to the patient or to the patient's new dentist. This service shall be provided either gratuitously or for a fee reflecting the cost of reproduction.

(d) The obligation to transfer records under subsection (c) exists irrespective of a patient's unpaid balance for dental services or for the cost of reproducing the record.

(e) Dentists shall provide for the disposition of patient records in the event of the dentist's withdrawal from practice, incapacity or death in a manner that will ensure their availability under subsection (c).

(f) The components of a patient dental record that are prepared by a dentist or an agent and retained by a health care facility regulated by the Department of Health or the Department of Public Welfare shall be considered a part of the patient dental record required to be maintained by a dentist, but shall otherwise be exempt from subsections (a)—(e). The components of a patient dental record shall contain information required by applicable Department of Health and Department of Public Welfare regulations—see, for example, 28 Pa. Code § 141.26 (relating to patient dental records)—and health care facility bylaws.

(g) This section does not restrict or limit the applicability of recordkeeping requirements in §§ 33.207 and 33.208 (relating to prescribing, administering and dispensing controlled substances; and prescribing, administering and dispensing medications).

(h) A dentist's failure to comply with this section will be considered unprofessional conduct and will subject the noncomplying dentist to disciplinary action as authorized in section 4.1(a)(8) of the act (63 P. S. § 123.1(a)(8)).”

Importantly, this is merely a partial listing of the applicable requirements that must be met by a licensed, qualified dentist when prescribing controlled substances. When is the last time you have reviewed your internal operations and documentation practices? An essential first step to achieving compliance is to conduct a **“GAP Analysis”** of your business, clinical, coding and billing practices. For additional information on the GAP Analysis process, I recommend you review my [article](#) covering this issue.

V. Conclusion:

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Importantly, the case against the Pittsburgh dentist discussed in this article is likely a harbinger of future opioid prosecutions and related dental fraud cases that we will be seeing around the country (although I doubt the government will likely tout the potential period of incarceration as they did in this case).

In any event, dentists and oral surgeons around the country need to keep in mind that both state and federal law enforcement and health care regulatory agencies are actively investigating and prosecuting opioid related crimes. In fact, as you may recall, last August, Attorney General Sessions announced the establishment of a new Department of Justice (DOJ) section known as the [***"Opioid Fraud and Abuse Detection Unit"***](#) that is dedicated to accomplishing this goal. As the government continues to tighten up its monitoring activities of opioid prescription practices in an effort to cut down on instances of perceived fraud and abuse, the scrutiny placed on your dental practice's documentation, medical necessity, coding and billing practices will undoubtedly grow. Does your dental practice have an effective Compliance Plan in place? If not, we strongly recommend that you get one! The implementation of an effective Compliance Plan, along with the performance of a GAP Analysis can greatly assist you in identifying possible areas of vulnerability where improvements are needed.



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[1] Under [Section 1862 \(a\)\(12\) of the Social Security Act](#) states, *"where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services."*

[2] As [noted](#) on the website of the Centers for Medicare and Medicaid Services (CMS), *"Medicare will pay for dental services that are an integral part either of a covered procedure (e.g., reconstruction of the jaw following accidental injury), or for extractions done in preparation for radiation treatment for neoplastic diseases involving the jaw. Medicare will also make payment for*

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oral examinations, but not treatment, preceding kidney transplantation or heart valve replacement, under certain circumstances. Such examination would be covered under Part A if performed by a dentist on the hospital's staff or under Part B if performed by a physician.

[3] The government does point out under the Federal Sentencing Guidelines, the actual sentence imposed would be based upon the seriousness of the offenses and the prior criminal history, if any, of the defendant.