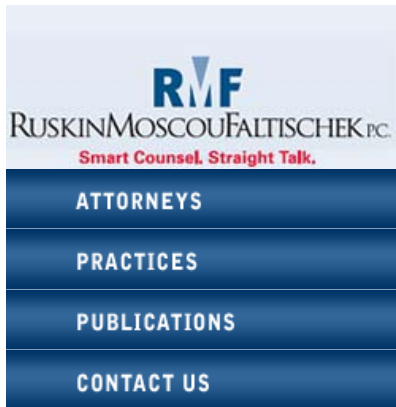


HEALTH LAW ALERT

December 2011



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For additional information on this or any health law related issue, please contact RMF's Health Law Department co-chairs: Alexander G. Bateman, who can be reached at 516-663-6589 or abateman@rmfpc.com or Jay B. Silverman, who can be reached at 516-663-6606 or jsilverman@rmfpc.com

A DENTIST'S BEST ANSWER TO AN INVESTIGATION BY THE NEW YORK STATE EDUCATION DEPARTMENT'S OFFICE OF PROFESSIONAL DISCIPLINE

By John Cooney, Esq.



As you know, with the exceptions of physicians, attorneys, and a handful of other professions, professional misconduct (the failure of a licensed professional to meet expected standards of practice) of all other professions, including dentists, is investigated and prosecuted by the New York State Education Department's Office of Professional Discipline (OPD). Minor forms of misconduct may be handled through advisory letters or administrative warnings issued by the OPD; these administrative actions are confidential. The penalties for more serious misconduct range from a fine to the revocation of the license to practice, in accordance with the nature of the misconduct and its consequences.

When the OPD investigates a complaint involving a clinical issue, the first stage includes interview of the complainant (and other potential witnesses) and requesting dental charts, billing records and radiographs from the dentist's office. Thereafter, before a decision is made concerning whether formal misconduct charges should be brought, the dentist may be given the opportunity for a personal interview with an OPD investigator. The purpose of this interview is for the dentist to explain his/her treatment. In the past, it was almost a certainty that an interview would follow a request for a patient's dental records. Recently, however, it appears that the OPD is less likely to pursue formal charges when the chart is well documented, explains treatment and the existence of chronic or acute conditions which can otherwise explain a poor clinical outcome. In recent months, we have seen that well documented treatment records can survive OPD scrutiny and, when coupled with effective communication by counsel, can lead to an administrative closure of the matter – without discipline and without the necessity of attending an investigatory interview to explain one's actions. This is a welcome development because an administrative closure, without a personal interview, greatly reduces a dentist's risk, cost and time.

In short, dentists are cautioned not to take investigations by the OPD lightly. A dentist's best answer to an investigation by the OPD is thorough dental records along with a detailed presentation concerning the dentist's treatment and applicable standards of care. Thus, it is advised that you isolate the patient's dental records and retain an attorney experienced in these matters and with OPD personnel to thoroughly walk-through the dental records - including treatment notes, x-rays, prescriptions, evaluations and referrals – in order to prepare your response and, if needed, to prepare you for the interview. Extreme caution is also warranted because, although an issue may appear to be clinical, the OPD will also look at the requested dental records to determine if there are other issues, such as billing practices or proper record keeping. In other words, under no circumstances, should a dentist respond to the OPD, or go to an interview, alone or without being prepared by counsel. A presentation which is well-thought-out and delivered could convince the OPD not to proceed.

Please contact John J. Cooney, member of Ruskin Moscou Faltischek's Health Law Department, at 516-663-6673 or jcooney@rmfpc.com

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