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Aftermath: New Illinois Sedation Law

The September 2007 *Litch's Law Log* discussed the recent findings and sanctions of the Illinois Department of Financial and Professional Regulation (IDFPR) related to the sedation-related death of a five-year-old child in a pediatric dental office that occurred in September 2006. The IDFPR ruled that the dentist's license should be suspended for 18 months, his pediatric dentistry specialty license suspended for at least three years, his controlled-substance license suspended for at least five years and his sedation permit revoked. The dentist subsequently filed a lawsuit challenging these rulings, as an appeal is permitted under the IDFPR statute (225 ILCS 60/41).

There have been several additional developments in the matter.

On Aug. 24, 2007, Illinois governor Rod Blagojevich signed SB214 (Public Law 95-399) to regulate deep sedation permits. This new law imposes stricter guidelines before dentists use deep sedation on patients.

While regulations implementing the Illinois Dental Practice Act currently require Permit A for a dentist to administer conscious sedation and Permit B to administer deep sedation and anesthesia (see <http://www.ilga.gov/commission/jcar/admincode/068/06801220ZZ9996dR.html>), the actual statute did not include the term "deep sedation." The new law changes that, with the following amendments (underlined) to existing law:

"a) No licensed dentist shall administer general anesthesia, deep sedation, or conscious sedation without first applying for and obtaining a permit for such purpose from the Department. The Department shall issue such permit only after ascertaining that the applicant possesses

the minimum qualifications necessary to protect public safety. A person with a dental degree who administers anesthesia, deep sedation, or conscious sedation in an approved hospital training program under the supervision of either a licensed dentist holding such permit or a physician licensed to practice medicine in all its branches shall not be required to obtain such permit."

The new law requires dentists to complete educational and equipment training to obtain permits for deep sedation. Dentists and their assistants must also be CPR-certified and continue training in sedation techniques. Specific reference is made to the AAPD/American Academy of Pediatrics joint *Guideline for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures*. The following provisions are entirely new:

"(b) In determining the minimum permit qualifications that are necessary to protect public safety, the Department, by rule, shall:

(1) establish the minimum educational and training requirements necessary for a dentist to be issued an appropriate permit;

(2) establish the standards for properly equipped dental facilities (other than licensed hospitals and ambulatory surgical treatment centers) in which general anesthesia, deep sedation, or conscious sedation is administered, as necessary to protect public safety;

(3) establish minimum requirements for all persons who assist the dentist in the administration of general anesthesia,

deep sedation, or conscious sedation, including minimum training requirements for each member of the dental team, monitoring requirements, recordkeeping requirements, and emergency procedures; and

(4) ensure that the dentist and all persons assisting the dentist or monitoring the administration of general anesthesia, deep sedation, or conscious sedation maintain current certification in Basic Life Support (BLS).

(5) establish continuing education requirements in sedation techniques for dentists who possess a permit under this Section.

When establishing requirements under this Section, the Department shall consider the current American Dental Association guidelines on sedation and general anesthesia, **the current "Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures" established by the American Academy of Pediatrics and the American Academy of Pediatric Dentistry**, and the current parameters of care and Office Anesthesia Evaluation (OAE) Manual established by the American Association of Oral and Maxillofacial Surgeons.

(c) A licensed dentist must hold an appropriate permit issued under this Section in order to perform dentistry while a nurse anesthetist administers conscious sedation, and a valid written practice agreement must exist between the dentist and the nurse anesthetist, in accordance with the Nursing and Advanced Practice Nursing Act.

A licensed dentist must hold an appropriate permit issued under this Section in order to perform dentistry while a nurse anesthetist administers deep sedation or general anesthesia, and a valid written practice agreement must exist between the dentist and the nurse anesthetist, in accordance with the Nursing and Advanced Practice Nursing Act.

For the purposes of this subsection (c), "nurse anesthetist" means a licensed certified registered nurse anesthetist who holds a license as an advanced practice nurse. (Source: P.A. 92-280, eff. 1-1-02.)

For more details about the new law, visit <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0399&pr>.

Also, in August 2007 the child's family settled a \$1 million lawsuit with the dentist, which represented the extent of his insurance coverage.

For further information, please contact Deputy Executive Director and General Counsel C. Scott Litch at (312) 337-2169 ext. 29 or slitch@aapd.org. PDT

Updates in Brief

The ADA's recently released report *Distribution of Dentists in the United States by Region and State, 2005* includes the following figures:

Number of	in 2005	Percentage of All Active Private Practitioners in 2005	
Professionally Active Dentists	176,634	<i>(which indicates that Pediatric Dentistry is now the 3rd most common dental specialty)</i>	
Professionally Active New Dentists*	36,913	General dentists	80.47%
Active Private Practitioners	162,180	Specialties	19.6% — comprising:
Active Private Practitioner New Dentists*	31,839	Orthodontists	26.1%
<i>*graduated from dental school in the past 10 years</i>		Oral & Max. Surgeons	18.8%
		Pediatric Dentists	14.4%
		Periodontists	14.3%
		Endodontists	12.8%
		Prosthodontists	8.5%
		Public Health Dentists	1.2%
		Oral & Max. Pathologists	0.7%
		Oral & Max. Radiologists	0.1%

For more information on this report, contact the ADA Survey Center at (312) 440-2568.

The ADA's recently released report *2006 Survey of New Dentist Occupations* includes the following earnings figures:

New Dentists* Net Income by Specialty

**indicates those who graduate from dental school between 1995-2004*

ENDO	OMS	ORTHO	PED DENT	GEN DENT	PERIO	PROS
\$249,634	\$213,669	\$191,900	\$188,196	\$148,232	\$143,375	\$114,971
**	**	Male	Male	Male	**	**
		\$199,529	\$210,414	\$165,721		
		Female	Female	Female		
		\$182,565	\$170,319	\$123,285		

*** These specialties did not have enough females in the sample for accurate data*

This report is also available by contacting the ADA Survey Center at (312) 440-2568. PDT