

Dental Service Organizations Industry Group

Related Practices

Business Services
 Corporate Finance
 Employee Benefits and Executive Compensation
 Government Investigations and Corporate Compliance
 Health Care
 Intellectual Property & Intellectual Property Litigation
 Labor & Employment
 Litigation
 Mergers & Acquisitions
 Private Equity, Venture Capital & Mezzanine Finance
 Taxation
 Trademark

Overview

One of the fastest-growing areas of the \$110 billion-a-year dental industry is the Dental Service Organizations (DSO) segment. Although the 20 largest DSOs—with combined annual sales of \$6 to \$7 billion—represent just slightly more than five percent of the total U.S. dental industry, the growth of this segment is fast outpacing that of the solo practitioner. With continued consolidation, either through mergers or acquisitions, DSOs stand to gain a more dominant presence in this important industry.

The legal needs of DSOs are many and diverse, and require comprehensive counsel and experienced representation on a wide array of sophisticated matters: from handling all matters of regulatory issues (among them: advertising, billing, patient finance, HIPAA) through preventive counseling to litigation; from assisting in M&A transactions to evaluating and completing real estate acquisitions or sales; from crafting practice purchase agreements to developing partnership and shareholder covenants; from providing sophisticated tax counsel to offering the full suite of estate planning services.

Dykema's DSO group offers a multi-discipline team that provides top-tier counsel, whose demonstrated accomplishments and proven experience cover the entirety of the business and legal needs that are unique to Dental Service Organizations. Our practitioners—whose areas of experience range, as shown below, from Litigation to Real Estate, Tax to Brand Protection, Mergers & Acquisitions to Employment Law, Health Care to Government Investigations and Corporate Compliance—provide, both individually and collectively, top-tier legal representation and "go-to" strategic counsel.

In addition to the services we provide to DSOs, we also annually host our Definitive Conference for Dental Service Organizations. More information can be found at www.dykemadso.com.

The key members of our DSO team are profiled below.

Dykema Dental Service Organizations Group

Brian A. Colao, Director

Brian is the Director of Dykema's Dental Service Organizations Industry Group. He is widely regarded as one of the foremost authorities in the United States on the corporate practice of dentistry, illegal fee splitting and the related regulations, including advertising regulations, laboratory regulations, patient finance regulations, billing regulations, HIPAA regulations, credentialing, permit and licensure regulations, marketing regulations, and labor law regulations affecting dental practices.

Brian specializes in the representation of DSOs nationwide in the following areas:

- Creating regulatory compliant business models and conducting ongoing compliance on a broad range of issues applicable to the industry

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- Defending DSOs in all manner of litigation and regulatory actions including State Dental Board Investigations and Complaints, State Attorney General Investigations and Complaints, Federal Investigations and Complaints, and private legal proceedings involving affiliated doctors
- Assisting Private Equity Investors in buying, selling, or investing in Dental Service Organizations

In recent years Brian has successfully resolved on behalf of his clients several significant civil and criminal Medicaid fraud investigations and state dental board actions alleging the corporate practice of dentistry, fee splitting and related violations, and he is the “go to” person in the industry for all manner of regulatory issues. Brian has also handled as lead regulatory counsel some of the most significant transactions in the industry on behalf of buyers, sellers, lenders, or potential investors. In recent years Brian has handled at least ten significant dental transactions representing in excess of \$2.5 billion of total value. Brian also assists lenders in conducting due diligence prior to extending credit to Dental Service Organizations.

Brian currently has clients in 46 states and has appeared before 37 separate state dental boards. Brian got his start in this industry approximately 15 years ago when he represented a group of 90 orthodontists in litigation with OrthAlliance, Inc. and Orthodontic Centers of America and handled cases of first impression involving the corporate practice of dentistry and fee splitting in 18 states that resulted in legal opinions that defined and established the law in this area.

Strategic Planning and DSO Transactions

Gerald T. Lievois

Jerry is a member of Dykema’s Corporate Finance Practice Group and Dental Service Organizations Group. He is experienced in DSO mergers and acquisitions, and assists private equity groups, other investors and their portfolio companies in DSO acquisition transactions.

Over the last few years, Jerry has worked on a number of significant DSO acquisition transactions. He also counsels DSOs in the preparation of regulatory compliant business agreements between DSOs and their affiliated practices and professionals.

Virgil Ochoa

Virgil Ochoa is an attorney in Dykema’s Dental Service Organizations Group as well as the Business Services Group, where he focuses his practice on dental service organizations, corporate finance matters and international trade law. Mr. Ochoa regularly advises clients on a wide array of corporate matters, including creating regulatory compliant business models, assisting investors in buying, selling or investing in Dental Service Organizations, assisting dentists in selling their practices, and assisting Dental Service Organizations in affiliating with dental practices.

R. Craig Woods

Craig is a member of Dykema’s Dental Service Organizations Group with a focus on DSO Business Agreements and government and regulatory investigations and litigation. He has considerable experience advising DSO’s, MSO’s, large practice groups, dentists and other health care providers in various corporate and regulatory matters, including the preparation of regulatory compliant business agreements between DSOs and their affiliated practices and dentists. Craig also brings more than 10 years of substantive regulatory litigation experience in complex commercial, business and health care law where he has advised and represented Fortune 500 and industry-leading dental, medical and health care companies.

DSO Compliance with State and Federal Regulations

Phyllis Adams

Phyllis is the former Leader of Dykema’s Health Care Practice Group and presently a member of the firm’s Executive Board and Dental Service Organizations Group.

Prior to becoming an attorney Phyllis was a licensed dental hygienist and also spent many years managing dental practices. She is highly experienced in the corporate practice of dentistry, illegal fee splitting and the related regulations, including advertising regulations, laboratory regulations, patient finance regulations, billing regulations, HIPAA regulations, credentialing, permit and licensure regulations, and marketing regulations affecting dental practices. Phyllis is skilled in reading dental records and has considerable experience defending compliance audits from state and federal government agencies as well as private payers.

Kathrin E. Kudner

Kathy is a member of Dykema's Health Care Practice Group and Dental Service Organizations Group.

Kathy has experience in a broad range of dental compliance issues, including mergers and acquisitions, corporate practice of dentistry, Medicaid compliance billing audits, HIPAA/HITECH, and application of the Affordable Care Act to DSOs, including the Sunshine Act. Kathy regularly advises DSO and dental clients on compliance with regulations relating to the manufacture and sale of dental devices, the prescription and dispensing of prescription drugs and controlled substances, scope of practice, and occupational safety. She has broad experience in responding to and defending compliance and billing audits and HIPAA complaints from state and federal government agencies. She is a foremost authority on HIPAA compliance and the new Affordable Care Act regulations. Kathy works with numerous DSOs in developing compliance programs, including policies and procedures, trainings and compliance audits.

Kathleen A. Reed

Kathleen is a member of Dykema's Health Care Practice Group and Dental Service Organizations Group. She has broad experience in the federal and state regulation of pharmacy and drug control and resale issues, fraud and abuse, scope of practice, licensure and regulatory matters, and patient care issues.

Kathleen is also a registered nurse who has significant experience working in both the clinical and business office aspects of dental practices.

DSO Credentialing, Permits and Certifications

Eric S. Klein

Eric is a member of Dykema's Health Care Practice Group and Dental Service Organizations Group.

Eric has significant experience with the licenses, permits and certifications required to operate dental practices, including dental licenses, radiation permits, tax certificates, controlled substance permits and hazardous waste certifications. Eric also has considerable experience in the licensure of foreign dentists and the residency requirements for out-of-state owners of dental practices.

DSO Brand Protection

Victor C. Johnson

Victor is a member of Dykema's Intellectual Property Practice Group and Dental Service Organizations Group.

Victor assists DSO clients with all types of intellectual property litigation and prosecution matters, including patent, trademark and copyright infringement; unfair competition and theft of trade secret litigation; securing trademarks and patents with the USPTO; and securing copyrights with the Copyright Office. He also assist sDSO clients on intellectual property due diligent matters, including validity and non-infringement opinions; advice on designing around patents; and negotiating and licensing of IP rights.

Eric T. Fingerhut

Eric is the Leader of Dykema's Trademark Practice Group and a member of the Dental Service Organization Group.

Ranked as a First Tier trademark lawyer by the World Trademark Review, Eric has significant experience representing Dental Service Organizations in clearing new marks and logos, registering trademarks, copyrighting proprietary information on practice development, and protecting trademarks, trade dress and web domain names through applicable legal proceedings. He has spent considerable time registering and maintaining catalogues of Dental Industry specific trademarks and copyrights for a variety of DSOs. Eric has significant experience in filing trademark and copyright infringement lawsuits, and trademark opposition and cancellation actions to protect Dental Industry Company brands. Recently, he successfully represented ClearChoice in an opposition it filed with the Trademark Trial and Appeal Board. The case pitted ClearChoice's CLEARCHOICE mark against an application to register the mark REAL CHOICE. He also regularly appears before the Internet Corporation for Assigned Names and Numbers (ICANN) in connection with internet domain name disputes.

Zachary Q. Hoard

Zack is a member of Dykema's Business Litigation Group and Dental Service Organizations Group. He has successfully represented clients in several state dental board actions and traditional litigation disputes regarding allegations of the corporate practice of dentistry, fee splitting and related violations.

Zack also has considerable experience in filing trademark and copyright infringement lawsuits, and trademark opposition and cancellation actions to protect Dental Industry Company brands.

DSO Patient Finance

Eric L. White

Eric is a member of Dykema's Corporate Finance Practice Group and Dental Service Organizations Group. He is experienced in DSO transactions and assists private equity groups, lenders and other investors in buying and selling DSOs and their affiliated practices and providing financing for such transactions. Eric represents DSO clients across the United States.

In his career of nearly two decades, Eric has worked on a number of significant dental and practice finance transactions on behalf of buyers, sellers, lenders and potential investors. He counsels DSOs, investors and practice owners on sophisticated dental business issues, including regulatory compliant DSO and practice ownership structures and governance, and best practices regarding load structures.

Eric also specializes in the preparation of regulatory compliant business agreements between DSOs and their affiliated practices and professionals, as well as other third parties.

Government Investigations and Corporate Compliance

Jonathan S. Feld

Jonathan Feld is the Leader of Dykema's Government Investigations and Corporate Compliance Team and a member of the Dental Service Organizations Group.

Jonathan's practice focuses on complex civil and criminal matters, including antitrust, health care fraud, financial and antibribery actions. He represents companies, directors and officers in investigations and enforcement actions by the U.S. Department of Justice (DOJ), Securities and Exchange Commission (SEC), the U.S. Department of Housing and Urban Development (HUD), the Food and Drug Administration (FDA) and other regulatory agencies. Jonathan advises corporations, boards of directors and board committees regarding internal investigations, corporate compliance programs and corporate governance issues, including the Foreign Corrupt Practices Act (FCPA) and data privacy. He former served as an Associate Deputy Attorney General at the DOJ.

DSO Tax Regulations

Anthony Ilardi, Jr.

Tony is a member of Dykema's Taxation Practice Group and Dental Service Organizations Group.

Tony has significant experience representing DSOs in developing and documenting tax advantageous ways to acquire affiliated practices, sell affiliated practices and transfer ownership in practices. He also has experience representing clients in connection with tax audits and in tax litigation.

Tony also advises DSOs with respect to transferred assets in order to ensure appropriate tax treatment.

DSO Employment Issues

Alison R. Ashmore

Alison is a member of Dykema's Labor & Employment Practice Group, Business Litigation Group and Dental Service Organizations Group.

Alison works with clients to resolve all manner of business issues and business disputes, including contractual disputes, protection of confidential information and intellectual property, breach of fiduciary duty, non-compete enforcement, fraud, unfair competition, and other business claims, as well as employment issues and bankruptcy claims. She has broad experience representing DSOs with employment litigation and advising them on reducing litigation risks and employment law compliance issues. She represents employers and businesses in both state and federal court and before the Equal Employment Opportunity Commission. Alison also has experience representing clients pursuing appeals in both Texas appellate courts and the Fifth Circuit Court of Appeals

Arlene Switzer Steinfield

Arlene is a member of Dykema's Labor & Employment Practice Group, Employment Litigation Group, Dental Service Organizations Group, Biotechnology and Life Science Group, Health Care Practices Group, Hospitality Practice Group, and the Pharmaceuticals & Medical Products Practice Group.

Arlene has represented DSOs, medical practice groups, physicians, dentists and hospitals in connection with employment litigation in state and federal court, devising preventative compliance strategies for employee terminations while reducing the risk of litigation, and providing advice in connection with internal audits of personnel practices, and the preparation of personnel policies and handbooks. Arlene also advises employers on wage-hour compliance, conducts internal investigations for health organizations on claims of discrimination and harassment, and provides training to health care employers on employment law compliance.

Government & Regulatory Litigation

Leonard C. Wolfe

Len is a member of Dykema's Government Policy Practice Group and Dental Service Organizations Group. He is also currently a member of the firm's Executive Committee and a former Director of the firm's Regulated Industries Department.

Len's practice encompasses several areas of legal representation, including general corporate matters, public policy litigation, government reorganization and restructuring, and general administrative law (including representing clients before various state departments, agencies and boards). He has been involved in the drafting of complex legislation and administrative rules on a variety of matters, including compliance and licensing matters, economic development, Freedom of Information Act (FOIA) and state ethics and conflicts of interest. In addition, Len has experience with other governmental matters, including department and agency investigations, Office of Auditor General performance audits and the drafting of Interlocal Agreements, Intergovernmental Transfer Agreements, Executive Orders and Executive Directives, as well as

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Advisory Opinion requests.

Publications

"Speaking from Experience: Setting Yourself Up for a Successful Dental Practice Acquisition"

February 4, 2019

DSO News

"Best Practices for Sellers in the Evolving DSO Marketplace"

January 7, 2019

DSO News

"Protect Your Dental Practice from Government Scrutiny—Watch for Medicare and Medicaid Overpayments"

February 11, 2016

DentistryIQ

"Why it's Important for Dental Service Organizations to License Intellectual Property"

October 14, 2015

"Compliant Dental Advertising in Texas"

September 2015

North Texas Dentistry, Volume 5, Issue 6

"Social Media and HIPPA – 9 Tips to Stay Compliant"

April 2015

North Texas Dentistry, Volume 5, Issue 2

"Some Free Advice: Is a MAC Clause the Answer?"

February 23, 2015

Metropolitan Corporate Counsel

"Texas Dental Board Considers Controversial and Anti-Competitive Rule Changes Restricting Dental Service Organizations"

December 2014

North Texas Dentistry, Volume 4, Issue 5

"Properly Structuring Patient Finance Plans"

July 2014

North Texas Dentistry, Volume 4, Issue 3

"Document and Protect: How Businesses Can Avoid Making Common Errors in Protecting Company Assets"

April 2011

Smart Business Dallas

Speaking Engagements

Associate Compensation, Orientation & Professional Development Plans that Promote Retention, Panelist, Dental Group

Evolution Conference, Scottsdale, Arizona

January 10-11, 2019

Legal Structures for Growth: Understanding the Various DSO and Partnership Structures, Speaker, Dental Group Evolution

Conference, Scottsdale, Arizona

January 10-11, 2019

Review and Analysis of the Current DSO Marketplace, Speaker, Scaling Up Group Dental Symposium, Louisville, Kentucky

November 14-16, 2018

5th Annual Definitive Conference for Dental Service Organizations

July 18, 2018

Associate Legal Agreements the Right Way, Presenter, DEO Associate Summit, Houston, Texas

November 4, 2017

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Associate Compensation and Corporate Structure, Speaker, Breakaway Seminar, San Antonio, Texas
October 5, 2017

Origins and Benefits to Becoming a DSO, Presenter, Dental Business and Legal Symposium, National Harbor, Maryland
September 30, 2017

4th Annual Definitive Conference for Dental Service Organizations
June 15, 2017

Overview of Associate Hiring and Compensation Issues, Presenter, Associate Summit Conference, Phoenix, Arizona
September 30, 2016

Overview and Structure of Dental Service Organizations, Presenter, Breakaway Enterprise Seminar, San Antonio, Texas
August 18, 2016

3rd Annual Definitive Conference for Dental Service Organizations
June 15, 2016