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Can Dental Plan Ratings Be Defamatory?

Question: I recently learned that a dental plan I participate with has developed a rating system. This system assigns a rating (such as a letter grade from A to D) to each of its network dentists. It plans to begin publishing these ratings to all patients enrolled in its plan and the plans it administers. I have been provided no specific information regarding what information was used to determine my rating or how it was calculated. Nor have I been given the opportunity to contest the method used to determine my rating or the information the rating was based on. If I believe my rating is false and is damaging my reputation and costing me patients, what legal recourse do I have against this dental plan?

Answer: Health and dental plans are now more frequently adopting these types of rating systems. I believe the trend began with “pay for performance” reimbursement models. Those models apply to MDs and DOs in the health care market. The idea is to create financial incentives for care that is managed effectively/efficiently and to remove any incentive to provide some services. These ratings have a purpose internally when used by a health plan to separate those who are effective/efficient from those that are less so.

Why your dental plan would broadcast ratings to patients is a question only the dental plan can answer. When you agree to participate you do so (among other reasons) based on the promise that the dental plan is going to direct those patients enrolled in its plan to you. I can only imagine that dentists with a C or D rating are going to see fewer new patients than those with A or B ratings, and that C- or D-rated dentists may even lose some patients. This is not what you bargained for when you decided to participate with this dental plan.

Currently, there is no statutory law that would make the dental plan’s publication of a false, misleading, and otherwise defamatory rating illegal, or that would give you a right to know what the rating is based on or how it

was determined. The dental plan’s rating is unlike a credit score, which is governed by the federal Fair Credit Reporting Act. That law regulates credit reporting agencies, requiring them to gather information in certain ways, disclose to us how our credit ratings are computed, provide us with a free credit report, an opportunity to contest/request removal of adverse information, etc. But in the absence of such a law, your dental plan is free to do what it likes, subject only to state law defamation claims.

Under Michigan law, you could sue the dental plan for defamation. You would have the burden of proving that your rating is false and defamatory, it was published to third parties, and that you have suffered economic damages as a result. In such a case, the defamatory nature of a C or D rating should be apparent to most, and the fact that the rating is sent by the dental plan to enrollees would satisfy the publication requirement.

Proving that the rating is false and that you have lost patients as a result is what the case would likely be about. Certainly, in the discovery phase of such a case the dental plan would have to disclose its rating methodology, the information it used in determining your rating, information supporting its truthfulness or accuracy, etc. The refusal of the dental plan to provide you with this information and to object to your rating prior to or at the time it was published would also be factors in the case. This would tend to make the dental plan appear to know either the rating was not defensible and/or that it was going to cause damage when published.

Litigation is often expensive and time-consuming, and no guarantee of success can be made. Federal regulation would be the best way to insure these rating systems are fair, transparent, and do not cause financial harm to dentists who are being rated involuntarily. ●

Send questions of general interest to Dentistry and the Law, MDA Journal, 3657 Okemos Road, Suite 200, Okemos, MI 48864 or email Journal managing editor Dave Foe at dfoe@michigandental.org.