

UNETHICAL PRIVATE-EQUITY-OWNED DENTAL CLINICS
RECEIVE WELL DESERVED ATTENTION

Jim Moriarty
Moriarty Leyendecker
4203 Montrose, Suite 150
Houston, TX 77006
713. 528.0700
moriarty.com

Charles S. Siegel
Waters & Kraus
3219 McKinney Avenue
Dallas, Texas 75204
214.357.6244
waterskraus.com

JULY 2012

UNETHICAL PRIVATE-EQUITY-OWNED DENTAL CLINICS RECEIVE WELL DESERVED ATTENTION

It's been a bad few weeks in the limelight for private equity investors masquerading on the down-low as charity dentists when what they're really after is making millions by performing unnecessary dental work on poor kids and then getting Medicaid to pay for it. With the way everyone's acting, you'd think it was the mortgage crisis all over again – as if working class and poor folk were nothing more than pawns in a game played by Wall Street investors, but financed with American tax dollars. Outrageous! That just couldn't happen in this country!

Anyway, some private equity investors are crawling out from under their piles of money to complain about all the attention.¹

Who's shining the spotlight?

So, who's causing such a ruckus over this alleged private-equity-owned dental crisis? Is it a bunch of Huffington Post liberals out in California, taking a break from driving their electric cars through the fence at the Mexican border? Au contraire. First, it's the Republican politicians: Chuck Grassley, Republican Senator from Iowa;² U.S. Representative Michael Burgess, M.D., from Denton, Texas;³ U.S. Representative Jim Jordan of Ohio;⁴ U.S. Representative Trey Gowdy of South Carolina;⁵ and Texas State Senator Jane Nelson from Flower Mound,⁶ to name a few.

And the conservative politicians are joined by the media, including the avowedly conservative Fox News;⁷ Bloomberg (not exactly Mother Jones);⁸ WFAA TV in Dallas, a station owned by the same Belo Corporation outfit that publishes the conservative Dallas Morning News;⁹ and recently, PBS's Frontline.¹⁰

¹ <http://www.breitbart.com/Big-Journalism/2012/06/21/Trial-Lawyers-and-MSM-Rob-Poor-Kids-of-Dental-Care>

² http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=41518

³ <http://burgess.house.gov/blog/default.aspx?postid=292730>

⁴ <http://www.wfaa.com/news/investigates/medicaid-149603085.html>

⁵ *Id.*

⁶ <http://www.senate.state.tx.us/75r/senate/members/dist12/pr12/p032012a.html>

⁷ <http://www.myfoxphoenix.com/story/18772885/2012/06/12/dentists-performing-unnecessary-work-on-kids-to-bill-medicaid>

⁸ <http://www.bloomberg.com/news/2012-06-26/dental-abuse-of-u-s-poor-dodges-ejection-from-medicaid.html>

⁹ <http://www.wfaa.com/news/investigates/Crooked-Teeth-Medicaid-Millions-136287563.html>

¹⁰ <http://www.pbs.org/wgbh/pages/frontline/dollars-and-dentists/>

What's wrong with private-equity-owned dental clinics?

For over ten years, private equity investors have had their fingers in the nation's dentistry pie, investing in at least two dozen dental management organizations – companies that profit by purchasing, consolidating, marketing and managing a host of dental practices in several cities or states.¹¹ What's wrong with that?

Private equity investors

A private equity firm is a group of well-heeled individuals or investment funds interested in pooling their wealth to invest in privately owned companies that will, over time, make the investors even more money. Private equity firms generally invest directly in private businesses or they conduct leveraged buy-outs of publicly traded companies, which are then delisted from the stock market and made private. Private equity investors commonly have the financial ability to hold onto an investment for a long time until it has become successful enough to generate a handsome profit when it is sold or placed back onto the stock market through an Initial Public Offering.¹²

The Myth of the Dental Management Service Organization (DMSO)

Many equity investors have pumped a lot of cash into the very lucrative health care market, including the dental industry, by purchasing what's known euphemistically as Dental Management Service Organizations (DMSOs). In the last ten years, at least 25 DMSOs have been backed or purchased outright by private equity firms.¹³

The Journal of the American Dentistry Association has defined a DMSO as follows: "In general, a dental MSO provides management services that support the dental services provided by a dentist or his or her group practice. An MSO may provide a wide range of services-billing and collections, scheduling and record management, negotiating with insurers, recruiting staff, leasing space, purchasing equipment, credentialing, utilization review and quality assurance review." According to an industry trade group, a DMSO does nothing more than shield overworked dentists from the "distractions of running a business," such as administrative functions, human resources, sales marketing and purchasing expensive dental equipment.¹⁴

In reality, however, a DMSO is just a dental clinic bought and controlled by private equity investors. The investors pay the dentist outright for the practice and then make the dentist an employee, either directly or through an affiliated professional corporation. In the real world

¹¹ <http://www.delawareonline.com/article/20120603/BUSINESS13/306030018/GOP-targets-bill-aimed-dental-care-fraud>

¹² <http://www.investopedia.com/terms/p/privateequity.asp#ixzz1zIXF5q2C>

¹³ <http://www.bloomberg.com/news/2012-06-26/dental-abuse-of-u-s-poor-dodges-ejection-from-medicaid.html>

¹⁴ <http://www.dgpaonline.org/advantages.aspx>

dystopia of “2001: A Dental Odyssey,” the DMSO plays the role of HAL, the computer that was created to serve, but in fact ends up running the joint.

Private-equity-owned dental clinics exist solely for investors’ profit

A private-equity-owned dental clinic is owned by investors, not by dentists. These investors don’t care about dentistry unless it’s making them money. Their other investments are in outfits selling baby blankets,¹⁵ propane,¹⁶ auto parts,¹⁷ or steaks and hamburgers.¹⁸ It’s all the same to a private equity investor.

People don’t generally buy things they can’t control – with the possible exception of a puppy. The same holds true for the private equity investors who own dental clinics. It only makes sense that as owners, the investors would exert their control over the enterprise. Look at it from the investors’ point of view.

Wealthy private equity investors need opportunities to make more money, that’s a given. But you have to spend money to make money. To purchase an existing chain of dental clinics, a group of private equity investors may spend, for example, ten times the chain’s pretax income,¹⁹ which could be hundreds of millions of dollars. To grow that already large business further, so that ultimately, it can be sold at a profit to generate future revenue for the investors, a loan may be taken out to acquire more practices for the chain. Servicing the loan, however, will require the dental practices to bring in additional revenue.

Since the private equity investors own the business, they are the ones making the bottom-line decisions about how to generate the necessary additional cash. It’s *their* money, after all. So, how do they do it? The same way as with their other investments – sell more propane, or mufflers or steak dinners, of course. If you’ve invested in dentists, have them sell more dental work!

Private-equity-owned dental clinics force dentists to put investors’ financial interests over patients’ interests

And there’s the problem. If someone sells us a baby blanket or some fries with a cheeseburger that we didn’t really need, the consequences aren’t that serious and we could probably have judged for ourselves whether to buy it or not. This isn’t so for dental services. We rely on

¹⁵ <http://www.courtsquare.com/?#/investments/>

¹⁶ http://www.ferrellgas.com/Resource_/PageResource/JP%20Morgan%20Investor%20

¹⁷ http://www.ta.com/investments/port_detail.asp?sector=16

¹⁸ <http://www.valorep.com/strategy/criteria.html>

¹⁹ This is the amount the private equity investors at Church Street paid for the troubled Small Smiles Centers still under investigation. <http://www.bloomberg.com/news/2012-06-26/dental-abuse-of-u-s-poor-dodges-ejection-from-medicaid.html>

dentists to make important judgments for us about the health care we need. We should be able to trust that their advice is not tainted by self-interest.

The private equity investors' solution for how to squeeze more money from a dental practice is in stark conflict with nearly universal laws, rules and ethical principles governing the practice of dentistry. As explained by the American College of Dentists, dentists are respected members of a learned profession. A dentist's "chief motive [is] to benefit mankind, with the dentist's financial rewards secondary."²⁰ "[T]he level of financial gain to the dentist must never be a consideration in any of the dentist's professional recommendations."²¹ Because healthcare professionals owe this duty to recommend and provide medical treatment only when it serves the best interests of the patient, we trust our lives to them, and the lives of our children.

This is why it is illegal for a non-dentist to own a dental practice in most states, including Texas.²² It's why dentists in Texas and elsewhere are prohibited from entering into any arrangement in which their professional judgment might be interfered with or influenced.²³ It's why private-equity-owned dental clinics are a bad idea.

Private-equity-owned dental clinics prevent dentists from exercising their best professional judgment by tying employee compensation to company profits

Private-equity-owned dental clinics create an inevitable and irreconcilable conflict between a dentist's duty to make sound medical judgments based solely on the needs of the patient and the pressure to perform more dental work in service of the boss's financial agenda. The conflict has led U.S. senators and representatives as well as officials in at least six states to investigate, just to make sure someone's minding the store.²⁴ What they've uncovered are allegations that many private-equity-owned dental clinics emphasize quantity of care over quality of care. After all, Medicaid reimburses based on the number of procedures performed. The sales practices described in some private-equity-owned dental clinics sound more like what you'd expect from the car dealer than your child's dentist.

Some clinics establish quotas requiring their dentist-employees to perform a given number of procedures each day, or to bill a minimum of, for example, \$5,000 each day.²⁵ Often, the quotas are not established by a practicing dentist. The general production minimums are set back at the

²⁰ Ethics Handbook for Dentists, American College of Dentists.

<http://www.acd.org/ethicshandbook.html>

²¹ *Id.*

²² http://www.tsbde.state.tx.us/index.php?option=com_content&task=view&id=61&Itemid=72; *In re OCA Inc.*, 552 F.3d 413, 422-23 (5th Cir. 2008).

²³ Texas State Board of Dental Examiners, Rules & Regulations §108.70 (b)(1)-(15)(Improper Influence on Professional Judgment).

²⁴ *Id.*

²⁵ <http://smallbusiness.yahoo.com/advisor/nc-dentists-odds-over-management-company-rules-160240658.html>

chain's corporate office and then enforced by the office manager, who is generally not a dentist. Adjustments to the targets are made at the individual branches. On a day when fewer patients are scheduled, for instance, the per-patient target goals will go up; when more patients are seen, the sheer volume will reduce the pressure to sell additional procedures. In private-equity-owned dental clinics, all of this is discussed in weekly or even daily office-wide meetings, run by office managers. The bean counters announce the day's target goals, ask dentists to explain why the previous day's quotas were not met and offer refresher tips for everyone on how to persuade patients to concede to additional dental work – that very day if possible to avoid the risk of a future “no-show” appointment.

High production bonuses are doled out to dentist-employees who exceed their target quotas.²⁶ On the other end of the spectrum, the dentists who fail to meet production quotas hear about it from corporate management and office supervisors, most of whom are not dentists. Low production dentists – the ones who refuse to sell their patients dental work they don't need – are constantly compared to other “top producers.” They also receive negative performance reviews and threats of termination for their failure to generate sufficient profits for the private equity investors. Dentists who don't cave to the pressure are simply fired.

Many clinics go further to strip dentists of their ability to exercise sound professional judgment by offering production bonuses to every employee in the office. This undermines the professional's control over the safe practice of dentistry in ways that are both overt and subtle. For example, a technician may be instructed by her boss – the office manager – that she should take as many as 10 to 15 x-rays for each child seen in the clinic, or as many as Medicaid will reimburse. The clinic dentist, on the other hand, may request that only three x-rays per child be taken, given the fact that more are unnecessary and that the excess radiation may actually place children at a higher risk for cancer. But the technician receives a bonus tied directly to the number of x-rays she takes for each child. In this situation, the use of employee bonuses to assert control of clinic management over the professional judgment of employee-dentists is manifest. The technician takes her marching orders – and her bonus – from the clinic manager who signs everybody's paycheck, not from the dentist.

Some effects of the production bonus system for dental staff are more subtle. By rewarding every clinic employee with production bonuses, clinics may find that each employee feels pressure to do whatever it takes to meet a management-established quota to prevent the entire team from losing out. In addition, the prospect of a bonus now and then ensures that fewer employees are inclined to complain about a rigorous quota system that may require cutting corners on patient care and professional ethics. Whether their effects are open or disguised, production bonuses for dental clinic staff ensure that employees know who is boss.

²⁶ <http://www.pbs.org/wgbh/pages/frontline/dollars-and-dentists/>

All of this pressure to produce profits rather than practice dentistry creates an unhealthy climate of paranoia for the dentists. They may rush through procedures, perform procedures they are not yet competent to do, hurriedly begin treatment before a child's anesthetic has had time to kick in, or worse – strap a small child down to a papoose board and administer no anesthetic at all. Meanwhile, all of this focus on meeting production targets rather than practicing quality dentistry violates laws, rules and ethical codes governing the practice of dentistry.²⁷ In most states it's not legal; in no place on this world is it right.

Medicaid sweetens the deal

The potential for profit from the *ownership* of dentistry (as opposed to the *practice* of dentistry) is made even sweeter by state Medicaid programs that reimburse private-equity-owned dental clinics for low-income children's dental care. Medicaid is a federal health program for low income families that is funded by the federal and state governments, and managed separately by each state. State Medicaid workers don't have nearly the time and resources to review claims for work on children's teeth that private insurers do, so it makes reimbursement a snap. Indeed, Medicaid has instilled in private-equity-owned dental clinics a deeply held devotion to helping poor children in need of dental work – a lot, and as much as Big Government will pay for.

Indeed, some practically describe the former mere capitalists as today's philanthropists, boasting that the whole reason DMSOs ever came about was to help low income families find affordable dental care and that private-equity-owned dental clinics have actually “come to the rescue” of America's poor.²⁸ Admittedly, this bit of wholly unsupported revisionist history came from the creator of a private equity firm investing in payday loan operations in low-income neighborhoods.²⁹ (Now there's a guy helping low-income folks one paycheck at a time. For eternity.)

But not to digress. Medicaid availability for children's dentistry has been a tremendous boon for low income families. More than 16 million low-income kids simply went without dental care in 2009. When tooth decay – which affects almost 60 percent of children – goes untreated, the resulting pain and infections can affect their ability to learn and their health.³⁰ It is critical that all the nation's children receive dental care, and Medicaid funding plays a crucial part in achieving that goal.

²⁷ Texas State Board of Dental Examiners, Rules & Regulations §108.70 (b)(1)-(15)(Improper Influence on Professional Judgment); Ethics Handbook for Dentists, American College of Dentists. <http://www.acd.org/ethicshandbook.html>.

²⁸ <http://www.breitbart.com/Big-Journalism/2012/06/21/Trial-Lawyers-and-MSM-Rob-Poor-Kids-of-Dental-Care>

²⁹ <http://www.pdlcapital.com/cso.html>

³⁰ <http://www.pewstates.org/projects/childrens-dental-campaign-328060>

Private-equity-owned dental clinics rush to infest low income neighborhoods

Medicaid funding has also gone a long way toward putting private-equity-owned dental clinics within easy geographical reach of poor children in need of dental care. Some claim that there was a time when few dentists were conveniently located for families living in low income neighborhoods.³¹ That day is certainly long gone in urban Texas low income neighborhoods. In one short half-mile stretch of road in Dallas, there are as many as five Medicaid dental clinics.³² Not to be outdone, Houston betters that number with ten Medicaid clinics found within a mile of each other near Bellaire Boulevard.³³

Private-equity-owned dental clinics, in fact, are often in tight competition for the Medicaid business. Indeed, some clinics hire dental recruiters to cruise food stamp office parking lots and offer gift cards to low income mothers as an inducement for taking their children to dentists looking to build their Medicaid practice; they buy lunch for patients spending long waits for an appointment in the dentist's office to prevent the Medicaid recruits from leaving; they distribute coupons for free pizza to new customers; and pay bonuses to recruiters for bringing in the Medicaid business. And Medicaid recipients say the illegal recruiting efforts are not limited to just one private-equity-owned dental clinic.³⁴

Private-equity-owned dental clinics scramble for Medicaid dollars

The problem with Medicaid payments for low-income children's dentistry is that the deal is just a little too sweet, apparently, for the ethically challenged. Like a cake that's baked with too much sugar, the ethical underpinnings for the whole private equity-DMSO-Medicaid concoction appear to be at risk for crumbling apart. Though equity investors who now view themselves as saviors for the nation's poor children³⁵ suggest that abuses of the system are "statistically insignificant,"³⁶ the actual evidence is anything but.

³¹ <http://www.breitbart.com/Big-Journalism/2012/06/21/Trial-Lawyers-and-MSM-Rob-Poor-Kids-of-Dental-Care>

³² <http://www.wfaa.com/news/investigates/Dental-Dollars-Go-to-Hedge-Funds-123497004.html>

³³ https://maps.google.com/maps?ie=UTF-8&q=houston+bellaire+blvd+medicaid+dental+clinic&fb=1&gl=us&hq=bellaire+blvd+medicaid+dental+clinic&hnear=0x8640b8b4488d8501:0xca0d02def365053b,Houston,+TX&ei=UL78T6uPG4vD0AGOfDkBg&ved=0CLIBELYD&oi=local_group

³⁴ <http://www.wfaa.com/news/investigates/News-8-Investigates-medicaid-recruiters-scramble-for-texas-dental-patients-156569555.html>

³⁵ Turning a profit on the backs of poor children is nothing new, but at least in Dickensian times the profiteers resisted describing their conduct as "coming to the rescue" of their victims. "God bless us, every one!"

³⁶ <http://www.breitbart.com/Big-Journalism/2012/06/21/Trial-Lawyers-and-MSM-Rob-Poor-Kids-of-Dental-Care>

Instead of addressing the inherent problems with the stranglehold private-equity-owned dental clinics now have on Medicaid, some investors have resorted to the time honored tradition of blaming the journalists who report the stories.³⁷ It has even been suggested that the largely as-yet-to-be-seen consequences for unethical private-equity-dentistry should be attributed to Debbie Hagan, a private citizen who simply maintains a humble blog³⁸ to catalog dental abuses of which she is informed.³⁹ Rather than behave like some schoolyard bully literally calling a Kentucky grandmother names – from the safe distance of the Internet – why not focus on shutting down the unethical “bad apples” before they kill the goose that laid the golden egg? Is the problem that defenders of private-equity-owned dental clinics just wouldn’t know where to start? Because the rotten apples have been found festering from coast to coast.

Texas

- In Texas, eleven dental companies statewide are suspended from receiving Medicaid funds as a result of credible allegations of fraud in connection with Medicaid orthodontics after it was learned that Texas spends more money on braces for low income children than the other 49 states combined. In addition, 31 separate state and federal investigations are ongoing regarding the Texas Medicaid orthodontia scandal.⁴⁰
- It is the policy of Texas not to provide cosmetic orthodontia to Medicaid recipients. Rather, Medicaid orthodontic work is to be approved only where a case of severe malocclusion is shown to exist. A relatively few Texas orthodontists have allegedly been bilking Medicaid by outfitting children with braces who did not need them, adjusting the braces more often than needed and leaving the braces in place longer than necessary. For a time, Texas had not required a dental mold to be submitted with Medicaid claims. Further, Medicaid required orthodontists to charge separately for every office visit rather than charging a flat fee, which billing practice led unscrupulous dental chains to leave braces on too long and to adjust them more than necessary.⁴¹
- The bipartisan U.S. House of Representatives Oversight and Government Reform Subcommittee hears testimony from Texas orthodontist, Dr. Christine Ellis, who explains that when she complained to the Texas Dental Board that a Dallas dental chain majority-owned by a Chicago private equity firm had collected more than \$10 million in Medicaid payments from Texas for orthodontic work in 2010, she was told that the Dental Board could not prosecute the case because it had no authority to do more than take action against the licenses of *dentists*, not corporations or businesses. The board claims it is

³⁷ *Id.*

³⁸ <http://blog.dentistthemenace.com/>

³⁹ *Id.*

⁴⁰ <http://www.wfaa.com/news/investigates/Agencies-take-action-on-Orthodontic-Fraud--143737026.html>

⁴¹ <http://www.govtech.com/health/Medicaid-Fraud-Busters-Learn-From-Experience.html>

powerless to act, even though it is illegal for corporations or non-dentist venture capitalists to practice dentistry in Texas.⁴²

- Ninety percent of the reviewed claims made by dentists for nearly a half billion dollars in Medicaid payments for orthodontic treatment for low income children in Texas were fraudulent.⁴³
- The Dallas dentist, Richard Malouf, who has billed over \$10 million to Texas Medicaid just for orthodontic work on low-income children, sold a majority of his interest in All Smiles to Valor Equity Partners, a Chicago private equity group, whose Chris Roussos – a non-dentist – then ran All Smiles despite Texas law prohibiting a hedge fund from practicing dentistry in the state. In a YouTube video, Roussos described his management philosophy in running a different dental management company: "We define success on how well our practices are doing in the local markets. . . . Are they growing? Are they profitable? And are they exceeding the profitability as well as the growth of the local market?"⁴⁴
- In a half-mile portion of South Buckner Boulevard in Dallas, five separate offices offer Medicaid orthodontia. The All Smiles private-equity-owned dental clinic is owned by Valor Equity Partners in Chicago. Jefferson Dental Clinics is a private-equity-owned dental clinic owned by hedge fund Black Canyon Capital of California.⁴⁵ And Navarro Orthodontix has a dozen offices across Texas, and collects as much in Medicaid payments for orthodontics as anyone in the entire country – \$22 million in 2010.⁴⁶
- Though Texas Medicaid will not reimburse for braces on children younger than 12-years-old in the absence of special exceptions personally reviewed by the state dental director, nearly 19,000 kids under 12 received Medicaid braces in 2011– 24 percent of all children who received Medicaid braces.⁴⁷
- The Texas Medicaid program is also being bilked for unnecessary steel crowns for low-income children. Clinica Hispana, a storefront dental clinic in Houston, installed at least nine stainless steel crowns on the teeth of every Medicaid child who received crowns there in 2011, for a cost to the taxpayers of \$337,000. The same year, children who received crowns at Rodeo Dental in Fort Worth were fitted with an average of eight crowns each, for a total billed to Medicaid of \$1,004,000. Still in 2011, Bear Creek Dental, with seven clinics in North Texas, received over \$3.5 million from Medicaid for

⁴² <http://www.wfaa.com/news/investigates/Congress-Looks-at-Texas-Medicaid--Orthodontics-148980865.html>

⁴³ <http://www.wfaa.com/news/investigates/medicaid-149603085.html>

⁴⁴ <http://www.wfaa.com/news/investigates/Dental-Dollars-Go-to-Hedge-Funds-123497004.html>

⁴⁵ <http://www.blackcanyoncapital.com/portfolio.html>

⁴⁶ <http://www.wfaa.com/news/investigates/Braced--128041463.html>

⁴⁷ <http://www.wfaa.com/news/investigates/State-takes-action-after-News-8-report-on-Medicaid-braces-124166474.html>

steel crowns. And the Dallas private-equity-owned dental clinic All Smiles, now in bankruptcy, collected \$1.6 million, again just for steel crowns and only for 2011.⁴⁸

Arizona

- Big Smiles dentists brought in by ReachOut Healthcare America, a private-equity-owned dental clinic backed by Morgan Stanley Private Equity, travel in mobile clinics to Arizona schools, where they are alleged to strap children down forcibly and perform root canals on baby teeth and unnecessarily crown baby teeth with stainless steel caps, when no dental treatment was warranted in the first place.⁴⁹ In Camp Verde, four year old Isaac Gagnon, who experiences seizures from a brain injury in infancy, was treated by a traveling dentist without his parents' permission and received two stainless steel crowns, two root canals on baby teeth (pulpotomies) and ten X-rays – more than necessary and enough to present a health risk for an increased risk of cancer.
- The boy's parents, both school teachers, have filed suit against the private-equity-owned dental clinic for performing unnecessary dental work and for traumatizing their already fragile young boy.⁵⁰

California

- A nine-year-old boy in San Diego had four teeth pulled – allegedly without his mother's consent – by the Big Smiles Mobile Dental clinic, run by the private-equity-owned dental clinic ReachOut Healthcare America, which is in turn a private equity investment of Morgan Stanley. A traveling dentist extracted the four teeth in one of the school's empty classrooms, not in the nurse's office or a designated sterile room. The school suggested that if so many school nurses had not been let go due to budget cutbacks, a nurse could have overseen the Big Smiles' operation to ensure that the necessary authorization forms had been completed.⁵¹

Maryland

- Church Street Health Management LLC is a Nashville private-equity-owned dental clinic that manages 63 dental clinics in 21 states under the Small Smiles, Wild Smiles and Texas Smiles brands. In January 2010, the chain of private-equity-owned dental clinics agreed to a \$24 million settlement with the U.S. Justice Department concerning charges that the chain billed Medicaid for unnecessary procedures, including subjecting children

⁴⁸ <http://www.wfaa.com/news/investigates/archive/More-Medicaid-Millions-159802865.html>

⁴⁹ <http://www.myfoxphoenix.com/story/18772885/2012/06/12/dentists-performing-unnecessary-work-on-kids-to-bill-medicaid>

⁵⁰ <http://www.bloomberg.com/news/2012-05-17/dental-abuse-seen-driven-by-private-equity-investments.html>

⁵¹ <http://www.utsandiego.com/news/2012/mar/23/10news-teeth-extracted-school-without-moms-ok/>

to pulpotomies (root canals on baby teeth) between 2006 and 2010, a time during which the chain had been owned by a private equity firm. As part of the settlement, Church Street entered into a corporate integrity agreement, which the outfit has reportedly breached time and again, at a cost so far of \$230,000 in fines. The chain has yet to make promised improvements, however, and according to its own independent auditor, Church Street has allegedly continued to bill Medicaid for services not performed, inappropriately restrain children in the midst of dental treatment, fail to give sufficient anesthesia during painful procedures, do too many procedures in one sitting, and perform unnecessary procedures, all at a Small Smiles clinic in Manassas, Virginia. After the private-equity-owned dental chain filed for bankruptcy in February of this year and in view of the company's flagrant violations, the Inspector General's office with the Health and Human Services Department threatened to exclude Church Street from receiving further Medicaid payments. So as not to disrupt patient services, however, Church Street was given another chance to correct its conduct. But when a site report was issued this May on the company's Oxon Hill dental clinic in Maryland, once again officials allegedly found the improper restraint of children, unnecessary root canals and tooth extractions and inadequate procedures governing the administration of anesthesia. In New York, Church Street closed its clinics, paid at least part of the \$2.3 million owed under the 2010 settlement, and left the state, which had imposed serious anti-fraud reviews of Church Street's reimbursement requests. The dental chain has since reorganized, but it still owes the U.S. taxpayers \$10.8 million. Church Street could still be tossed out of Medicaid if it continues to refuse to reform.⁵²

Insignificant? Isolated? Trumped up charges by "crackpot" grannies and vultures in the media? A review of the facts reveals otherwise. Abuses of Medicaid by private-equity-owned dental clinics are very real. The emphasis ought to be on putting a stop to unethical practices and not on shooting the messenger.

Who owns America's dental clinic chains?

Despite the legal difficulties and brushing aside the ethical impossibilities, private-equity-owned dentistry is big business in America. From 2007 to 2010, Medicaid reimbursement for dentistry claims rose 63 percent to \$7.4 billion.⁵³ As an example, the clinics owned by just one private equity firm – the Nashville-based Church Street/Small Smiles chain – had over 1 million patient visits in 2011, with \$161 million in revenue, of which more than 90 percent came from Medicaid and CHIP, the state Children's Health Insurance Program.⁵⁴

⁵² <http://www.bloomberg.com/news/2012-06-26/dental-abuse-of-u-s-poor-dodges-ejection-from-medicaid.html>

⁵³ <http://www.bloomberg.com/news/2012-06-26/dental-abuse-of-u-s-poor-dodges-ejection-from-medicaid.html>

⁵⁴ *Id.*

Some in the industry say that private-equity-owned dental chains are performing a valuable public service by filling a void in the dental treatment of low income children.⁵⁵ But the good works are not charitable. Instead, the private-equity-owned dental clinics rake in billions of dollars every year, most of which they get from us, the taxpayers.

Just who are these investors? At least two dozen dental clinic chains have been backed or purchased outright by private-equity firms, creating a host of private-equity-owned dental chains that stretch throughout the country. These private equity investors include:

- MSD Capital, L.P., the investment firm "formed to exclusively manage the capital of Michael Dell and his family" maintains a controlling interest in Dental One Partners, a DMSO created in 2008 by the merger of Dental Care Partners, Inc. (acquired by an affiliate of MSD Capital and by minority investor North Peak Capital LLC in 2007) and Dental One, Inc. (similarly acquired in 2008). DentalOne Partners serves more than 150 practices in 14 states.⁵⁶
- Samson Dental Practice Management, LLC (operating as ImmediaDent) is owned by Ferrell Capital, Inc., which is owned by The James E. Ferrell Revocable Trust. Immediadent operates 22 clinics in Indiana, Ohio, and Kentucky. James E. Ferrell is Chairman of Ferrellgas Partners, L.P., the second largest distributor of propane in the United States.⁵⁷
- Leonard Green & Partners, LP⁵⁸ is invested in Aspen Dental Management, Inc., the outfit that makes its money by encouraging low-income clients to pay for their dental work on credit, with an APR of 26.99%.⁵⁹
- In 2006, Court Square Capital Partners of New York (formerly Citigroup Venture Capital)⁶⁰ paid \$380 million for Western Dental,⁶¹ a group that advertises its acceptance of Medi-Cal (Medicaid) payments for dentistry services.

⁵⁵ <http://www.breitbart.com/Big-Journalism/2012/06/21/Trial-Lawyers-and-MSM-Rob-Poor-Kids-of-Dental-Care>

⁵⁶ <http://msdcapital.com/about.htm>; <http://www.dentalonepartners.com/our-heritage.php>; <http://www.prnewswire.com/news-releases/dentalcare-partners-acquired-by-msd-capital-52165427.html>; <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aV4q8ymnCOPo>; <http://www.dentalonepartners.com/index.php>; and <http://www.dentalonepartners.com/organizations>.

⁵⁷ <http://www.immediadent.com>;
http://www.ferrellgas.com/Resource_/PageResource/Jp%20Morgan%20Investor%20.

⁵⁸ <http://www.leonardgreen.com/InvestmentPhilosophy.htm>

⁵⁹ <http://www.aspendental.com/offers-affordability/financing>

⁶⁰ http://www.courtsquare.com/?#/about_us/

⁶¹ <http://www.westerndental.com/about-us.aspx>

- In 2000, Levine Leichtman Capital Partners⁶² invested in Interdent, a DMSO begun in 1978 by an “entrepreneurial group of dentists” that now supports over 120 offices in eight states.⁶³
- Welsh, Carson, Anderson & Stowe acquired a controlling interest in Smile Brands Inc. from another private equity firm, Freeman Spogli & Co., in 2010. Smile Brands supports almost 400 dental offices in 18 states under the Bright Now!, Monarch Dental, Castle Dental, and other brands. Freeman Spogli & Co. retained a minority interest in Smile Brands.⁶⁴
- Cressey & Co., a private equity firm specializing in health care, bought a majority stake in Midwest Dental Inc., a DMSO begun in 1968 that in 2007 had 49 offices in four states.⁶⁵ When Cressey sold its interest to Friedman Fleischer & Lowe, a San Francisco equity investment firm, in April 2011, Midwest Dental Inc. had grown to include 80 dental practices.⁶⁶
- Valor Equity, a Chicago private equity firm,⁶⁷ in 2010 invested in the Dallas-based All Smiles chain of dental clinics,⁶⁸ an entity now in bankruptcy and under fire for its fraudulent billing of Medicaid in Texas.⁶⁹
- Morgan Stanley is invested in ReachOut Healthcare America, the largest U.S. provider of administrative support services in 320 cities over 22 states for dentists who travel to local schools, where low-income children are treated from a mobile clinic.⁷⁰

In the last decade, then, private-equity-investors have taken over the control and management of dental practices all across the country. But the motive isn’t altruism; it’s money. If the private-equity-owned dental chains are willing to overlook a little illegality, as they apparently are,⁷¹ the whole venture seems like a dream come true, for the investors, anyway. For the victims of the scam – the actual dental professionals, their young subjects, and the American taxpayers – it’s a wickedly bad nightmare.

⁶² <http://www.llcp.com/about.html>

⁶³ <http://www.interdent.com/interdent/about/>

⁶⁴ http://www.welshcarson.com/media/5835/wcas_acquires_majority_interest_in_smile_brands_-_november_2010.pdf

⁶⁵ http://www.cresseyco.com/NEWS/MWD_5.7.07.pdf

⁶⁶ [http://www.cresseyco.com/NEWS/Midwest_Dental_Release_\(4-13-11\).pdf](http://www.cresseyco.com/NEWS/Midwest_Dental_Release_(4-13-11).pdf)

⁶⁷ <http://www.valorep.com/strategy/criteria.html>

⁶⁸ <http://www.allsmilesdentalcenters.com/about.html>

⁶⁹ <http://www.wfaa.com/news/texas-news/Attorney-General-files-lawsuits-related-to-WFAA-dental-investigations-160402665.html>

⁷⁰ http://www.morganstanley.com/institutional/invest_management/private_equity/portfolio.html

⁷¹ Well, some overlook it. Those who maintain the practice is not illegal are simply uninformed, or worse. <http://www.breitbart.com/Big-Journalism/2012/06/21/Trial-Lawyers-and-MSM-Rob-Poor-Kids-of-Dental-Care>

Who are the victims of unethical private-equity-owned dental clinics?

So the system isn't perfect, nothing is; but who's getting hurt? Three separate groups are taking the hit from the ongoing abuse engaged in by unethical private-equity-owned dental clinics: dentists and other clinic employees; low-income children; and the taxpayers.

Dentists and dental clinic employees

Most of the time, the dentists are *not* the villains in this crime; they are the *victims*. The culprit is the corrupt business model that results when a perfectly successful method for selling more burgers is applied to a learned profession like dentistry that exists for the purpose of benefitting humanity.⁷² Mixing the two is a recipe for fraud and malpractice like that being played out now in private-equity-owned dental chains across the country.

Most dentists are honest people who have devoted at least eight years of their lives preparing to work in a profession where they can help other people. But going to dental school costs a bundle. After eight years, many dentists take on their new profession with hundreds of thousands of dollars of debt. They need a job.

Those who wind up working for private-equity-owned dental chains, however, often feel as though they are little more than indentured servants. When they sign on, they are forced to enter into employment contracts with non-compete clauses that forbid them from practicing anywhere else within a short distance of any dental clinic owned by the private equity firm. If the new dentists receive a signing bonus, they are required to give it back should they leave within the first year. And many contracts include provisions requiring the dentists to pay a \$500-a-day penalty if they fail to give 90 days notice when they do leave.

Admittedly, dentists with a number of years' practice behind them can earn a handsome living. But those truly in it for the money go to work in finance on Wall Street, not to dental school.⁷³ You become a dentist if you care about helping people. You don't want to be forced by some chain management guru into performing a lot of unnecessary dentistry just so you can make the day's quota. You don't want to compete against other private equity clinics in the chain to see which can sell more pulpotomies or stainless crowns each month, as if you were peddling shoes at the shopping mall. And you certainly don't want to hurt anyone, least of all small children.

Low-income children

But small children are, of course, the pawns in the scheme. Poor children's teeth are the widgets sold by unethical industry players to Medicaid in exchange for a considerable profit. Traditional dentists complain that Medicaid reimbursement rates are so low that the dentists lose money each

⁷² Ethics Handbook for Dentists, American College of Dentists.

<http://www.acd.org/ethicshandbook.html>

⁷³ <http://harvardmagazine.com/2008/05/flocking-to-finance.html>

time they do the work. But many private-equity-owned dental clinics, by contrast, find the work so lucrative that they compete with one another by paying would-be used car salesmen to scour Food Stamp offices and Wal-Mart parking lots to bribe potential “patients” with coupons for free pizza.⁷⁴ And that’s just the unseemly side of the scam.

The truly horrific part comes during the widgetry process. Squirming children? Not a problem – the kids get physically strapped down onto “papoose boards” to ensure they stay still. After all, if you’ve got less than half an hour to install a half dozen stainless steel crowns in a small child’s mouth, you can’t have him jumping out of the seat. It also helps that parents are often excluded from the room so they cannot see what is being done to their children.⁷⁵

Or what about the pawns in the Texas orthodontia scam? Many kids whose dentists were caught illegally billing Medicaid for cosmetic braces that are not reimbursable are still stuck with a mouthful of metal and no dentist to remove them. And this is after wearing them for years longer than necessary because the private-equity-owned dental clinics were making additional money from Medicaid with every adjustment.

The “mainstream media”⁷⁶ are so busy reporting these stories *not* because they are “ginned up” on “outrage” or because they hate capitalism. Remember that virtually all media today are owned by just six billion-dollar businesses anyway: Time Warner, Walt Disney, Viacom, Rupert Murdoch's News Corp., CBS Corporation and NBC Universal. Reporters cover the private-equity-owned dental clinic stories so often because the abuse is occurring so often, and because of the terrible price that poor children are made to pay for someone else’s gain.

In Texas, WFAA has reported that five year old David Alvarez of San Antonio was given 20 crowns in a single visit to a Texas private-equity-owned dental clinic. The same dentist gave three year old Dallas Freeman 15 caps on his teeth in less than 23 minutes. Both children had to undergo oral surgery with sedation to correct the problems caused by their initial treatments.⁷⁷

Bloomberg recounted that at a Small Smiles/Church Street private-equity-owned dental clinic in Virginia, an independent monitor discovered that children were improperly strapped down on papoose boards during unnecessary root canals performed with inadequate anesthesia to control the pain.⁷⁸

⁷⁴ <http://www.wfaa.com/news/investigates/News-8-Investigates-medicaid-recruiters-scramble-for-texas-dental-patients-156569555.html>

⁷⁵ <http://www.pbs.org/wgbh/pages/frontline/dollars-and-dentists/>

⁷⁶ <http://www.breitbart.com/Big-Journalism/2012/06/21/Trial-Lawyers-and-MSM-Rob-Poor-Kids-of-Dental-Care>

⁷⁷ <http://www.wfaa.com/news/investigates/archive/More-Medicaid-Millions-159802865.html>

⁷⁸ <http://www.bloomberg.com/news/2012-06-26/dental-abuse-of-u-s-poor-dodges-ejection-from-medicaid.html>

In Arizona, both Fox and Bloomberg covered the story of a four-year-old special needs boy who was physically restrained at school by a traveling Big Smiles/ReachOut Healthcare America dentist who gave the traumatized child two root canals on his baby teeth and two stainless steel crowns – all without the permission or presence of the child’s parents.⁷⁹

Dentists, their hygienists and assistants bear the ethical cost of unscrupulous private-equity-owned dentistry; the kids pay the physical and emotional price; and a third group fronts the financial toll.

Taxpayers

Finally, who are the financial victims? Who’s paying the private-equity-investors who own the dental clinics? We are. Who makes it possible for these dedicated philanthropists to turn a tidy profit by bilking the system? We do – the American taxpayers. Medicaid is funded with state and federal tax dollars. A fraud on Medicaid is a fraud on each of us. When private-equity-owned dental clinics collect billions in Medicaid dollars to which they were not entitled, that’s a freeway extension that wasn’t built, a school program that was cut, a reduction in police and fire protection, a simple pothole that didn’t get fixed. It’s a lot of lost jobs.

Who are the advocates for those wronged?

Some people have the ability to get up in the morning, go to work, put their heads down and their blinders on, do the work required, pick up a pay check, come home and not worry about what happened in between. For others, the stress of working in a private-equity-owned dental clinic that is unhealthy for the poor children entrusted to an unscrupulous practice manager’s care is simply too much. The children and their families need someone to speak for them, of course. But the dentists and the other clinic employees – whether they are dental hygienists, dental assistants or receptionists – also need an advocate. It’s never easy to risk your paycheck or feel as though you’re betraying the confidence of your coworkers who need a job as much as you do. It’s especially difficult now, when for most people – those who can’t afford private equity investments – jobs are scarce.

Qui tam whistleblower lawyers are *your* advocates. They are there to represent the interests of honest dentists and dental practice workers just trying to do the right thing. Qui tam lawyers help whistleblowers present their evidence to put an end to fraud and abuse within a private-equity-owned dental clinic gone wrong. And they work to protect dentists and employees from the threat and the consequences of unjust retaliation by the dental clinics.

⁷⁹ <http://www.bloomberg.com/news/2012-05-17/dental-abuse-seen-driven-by-private-equity-investments.html>; <http://www.youtube.com/watch?v=eurPz9ttDXU>; <http://www.myfoxphoenix.com/story/18772885/2012/06/12/dentists-performing-unnecessary-work-on-kids-to-bill-medicaid>

[Waters & Kraus](#) is a nationally recognized firm with lawyers practicing qui tam whistleblower litigation in several offices throughout the country. Waters & Kraus' attorneys have decades of experience successfully representing whistleblowers in a variety of fraud cases, including dental fraud cases.

In fact, [Waters & Kraus](#) and [Moriarty Leyendecker](#) are currently representing Dallas orthodontist Dr. Christine Ellis, a whistleblower who had the courage to file a lawsuit alleging that Medicaid dental clinics in Texas have been submitting false claims to the Texas Medicaid Program for purely cosmetic braces, which are not covered by the program. In 2010 alone, Texas taxpayers spent more in Medicaid orthodontic claims than the other 49 states combined. Dr. Ellis was asked by the Office of Inspector General of the Texas Medicaid Program to review Medicaid submissions by dozens of Texas dentists. Dr. Ellis, after completing her review, voiced her concerns to the Texas Dental Board about the alarmingly high levels of Medicaid fraud she discovered. Dr. Ellis has also testified before a congressional subcommittee on the same issue. The Republican Texas Attorney General Greg Abbott has now joined Dr. Ellis' lawsuit against several clinics in the private-equity-owned All Smiles dental chain. If the lawsuit results in a recovery for the state of Texas, Dr. Ellis – the whistleblower – will be awarded 15 to 25 percent of the state's recovery, as well as her own costs and attorneys' fees.

The purpose underlying whistleblower awards is to encourage dentists and employees in private-equity-owned dental clinics and dental chains to come forward and report the fraud and malpractice. The government does not have the resources to be everywhere at all times. Medicaid programs and state dental boards rely on Dr. Ellis, and other dentists like her, to put an end to Medicaid dental fraud.