

DENTAL LEGAL UPDATE

Unclaimed Property: Patient Credit Balances, Embezzlement & Found Money

by Jeanine Lehman, Attorney

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Unclaimed property held by the dental practice is owed to someone else. Policies and procedures should be implemented by dental practices to return the property to the patient or other owner.

Texas requires that unclaimed property be reported to and turned over to the Texas Comptroller of Public Accounts. The unclaimed property law affects dental practices in two ways. First, dental practices often hold the unclaimed property of others. Second, dental practices often have unclaimed property that they can claim from the Comptroller's office.

Credit Balances & Checks

A patient credit balance is the amount that is payable to a patient, generally, due to an overpayment by the patient. In its Unclaimed Property Reporting Requirements Manual, the Comptroller's office notes: "Credit balances that may or may not have been reduced to check form are reportable as unclaimed property under Section 72.101 of the Texas Property Code. The period of abandonment for this property type is three years and commences on the date of last contact with the company or individual. Balances owed to current customers should not be reported. However, if you have lost contact with customers, use the test on this page to determine if the credit balances should be included in your report."

Dental practices also may hold unclaimed property of employees for wages, which have a one year abandonment

period, and for amounts owed to vendors, whether reflected in uncashed checks or otherwise owed, as well as other types of unclaimed property.

Reporting Test

Holders of unclaimed property are required to file an annual report each July 1st to turn over unclaimed property that has been abandoned. For the July 1st report, use the following test to determine if a property is reportable:

As of the immediate past March 1st:

1. The property has remained unclaimed for at least three years (one year if wages).
2. The owner has not communicated with the holder, in writing or otherwise, regarding the property during the abandonment period.

Reporting

Holders of unclaimed property, for example, dental practices, are required to mail a notice by May 1st to all owners of property over \$250 that are due to be included in their July report. The Comptroller's office's website has sample due diligence letters to address this requirement. The notice is not required if the holder does not have record of an address.

Individual owner records of less than

Speaking Requests

For **Jeanine Lehman** and her colleagues to speak to professional and business groups on legal and practice management topics, please contact Jeanine Lehman at (512) 918-3435 or jeanine@jeanine.com

**Website Favorites**

Law Offices of
Jeanine Lehman P.C.
www.jeanine.com

Capital Area Dental Society
www.capitalareadental.org

Texas State Board of Dental
Examiners
www.tsbde.state.tx.us

Texas Dental Association
www.tda.org

Texas Academy of
General Dentistry
www.tagd.org

American Dental Association
www.ada.org

Texas Unclaimed Property
www.comptroller.texas.gov/up/

National Assoc. of Unclaimed
Property Administrators
www.unclaimed.org

Bryant Truitt, MBA, CFE
www.brytanassociates.com

Unclaimed Property (cont.) --

\$25 may be reported in the aggregate (with the exception of mineral interests). Holders may combine any amounts under \$25 by property type and report a single total for each property type. While aggregation of property items under \$25 is still allowed by law, it is discouraged; the more detail reported, the more property is potentially returnable.

Negative reports that are required by many states are no longer required in Texas. This means that no report should be filed when you have no unclaimed property.

The unclaimed property report must include, if known by the holder:

- (1) the name, social security number, driver's license or state identification number, email address, and the last known address of: (A) each person who, from the records of the holder of the property, appears to be the owner of the property; or (B) any person who is entitled to the property;
- (2) a description of the property, the identification number, if any, and, if appropriate, a balance of each account, except for accounts of less than \$25 that can be reported in the aggregate;
- (3) the date that the property became payable, demandable, or returnable;
- (4) the date of the last transaction with the owner concerning the property; and
- (5) other information that the Comptroller by rule requires to be disclosed as necessary for the administration of the law.

Reporting is performed electronically and instructions for reporting are on the Comptroller's office's website.

All holders are required to retain rec-

ords of unclaimed property for 10 years from the date on which the property is reportable.

The Texas Unclaimed Property Reporting Requirements Manual has helpful information and is at:

<http://comptroller.texas.gov/up/forms/96-478.pdf>

Another wrinkle – If the owner of the unclaimed property is a resident of a state other than Texas, then reporting may be to that other state, instead of Texas. There are tests to evaluate if the reporting is to occur in Texas, including if the last known address of the apparent owner, as shown on the records of the holder, is in Texas.

More detailed tests to help determine if the unclaimed property is to be reported in Texas or another state are contained in Chapter 72 of the Texas Property Code. The National Association of Unclaimed Property Administrators has links to other states' unclaimed property programs.

Audits & Statutes of Limitations

The Comptroller's office does audit holders of unclaimed property and notes in its audit procedures concerning credit balances: "Unclaimed property found in credit balances is not always found in accounts payable. Patient accounts receivable at hospitals and customer accounts receivable at credit card and utility companies are good examples of the types of holders who, by the nature of their business, have relatively large volumes of accounts receivable credit balances.

Unclaimed Property (cont.) --

When checks are not routinely issued to the owners for these balances, the auditor will often find that these balances are absorbed into income before the running of the three-year abandonment period and not reported as unclaimed property.”

www.comptroller.texas.gov/taxinfo/audit/unclaimed/05_Checks_Issued_by_Banks_to_Collateral.htm#credit_balances

In 1987, Texas statutes of limitations, meaning the time limit in which a claim can be brought, were abolished regarding the obligation to report and send unclaimed property to the Comptroller’s office. Therefore, the obligation under the unclaimed property law is different from tax laws, which often do have statutes of limitations. The lack of a statute of limitations means that an audit may cover many years of past activity. In its 2007 Audit Procedures for Unclaimed Property, the Comptroller’s office indicated that Texas Property Code, Section 74.103(b) states unclaimed property records must be kept for ten (10) years from the date on which the property was reportable. This is the reason the Comptroller’s office gives for generally limiting audit periods to the last ten reports. The records to support property that was reportable on the first report considered in an audit will go beyond ten years to include any applicable abandonment periods.

Interest & Penalties

Sections 74.705 and 74.706 of the Texas Property Code provide that a person who fails to pay or deliver unclaimed property on time shall pay interest and penalties from the date the property should have been paid until the date it is received in the Comptroller’s Office. The current interest rate is 10% per year. The current penalty is an additional 5 – 10% of the value of the unclaimed property. The Comptroller will calculate interest and penalties, which can be significant.

Embezzlement of Credit Balances

Bryant Truitt, certified fraud examiner, dental prac-

tice consultant, and CEO of Brytan & Associates in Kerrville, Texas, notes that dental practices need to be careful and exercise oversight over patient credit balances and inactive patient accounts, as both create several opportunities for embezzlement schemes by employees. The State concurs – the Comptroller’s Audit Procedures for Unclaimed Property indicate “Unclaimed property, by its very nature of being several years old and belonging to unlocated owners, is vulnerable to both intentional and unintentional misappropriation. Accordingly, it should be an area of strong internal control. Internal control must be evaluated and appropriate comments included in the audit plan.” Truitt also recommends several reports that may be created from dental software programs to monitor patient credit balances.

Recall Patients with Credit Balances

Truitt notes that credit balances may be helpful in recalling patients. For example, Truitt observes that there is risk in mailing checks to areas experiencing high levels of mailbox theft. Rather than mail a large check, as a courtesy, the patient may be called and asked if he would like to pick up the check at the practice. Then, the patient may be provided the opportunity to have dental work, such as dental hygiene, or other work done and use the credit balance for that work. Of course, if

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Jeanine Lehman is an Austin, Texas health law attorney who practices dental, health, real estate, and business law.

Past issues of the Dental Legal Update are available at www.jeanine.com

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Unclaimed Property (cont.) --

the patient prefers a refund, the patient's wishes must be honored.

Some dental practices call patients with credit balances to ask if they prefer to use the credit balance for future work or if they prefer a refund. The calls to patients also provide an opportunity to recall the patients.

Found Money

There is a flip-side to this topic. Often, dentists have substantial amounts of unclaimed property that is held by the Comptroller's office, particularly, for payments owed by dental insurance companies. Dentists can search for their unclaimed property at www.comptroller.texas.gov/up/ and follow the directions for claiming their unclaimed property. They should search names of dentists in the practice, as well as all dental practice entity and assumed names, including current and past names. Dentists may also search for their unclaimed property held by other states at the National Association of Unclaimed Property Administrators website at www.unclaimed.org

For history – Since the unclaimed property program began in 1962, the Texas Comptroller's office has returned more than \$1 billion to owners. The Comptroller's office is currently holding about \$4 billion of unclaimed proper-

ty. The average claim paid out to individuals is about \$1,000. Many claims are much higher, although no one has come close to a claim worth more than \$12.5 million from abandoned stock returned in 2015.

Conclusion

Unclaimed property held by the dental practice is owed to someone else. Therefore, policies and procedures should be implemented by dental practices to return the property to the patient or other owner. For credit balances, the credit may be applied to the patient's future services or refunded directly to the patient. Addressing credit balances early is important for patient relations. Finally, compliance with the unclaimed property law is critical to avoid significant liability. ■

How do you prevent your money from becoming abandoned?

- When you move, officially change your address with the United States Postal Service or your local post office. This will ensure any checks, rebates or financial correspondence will be forwarded to your new address.
- Keep a current list of all open bank accounts and check in on them once a year to keep them active.
- If you leave a job, confirm with your employer that your current address is on file for any additional payroll or reimbursement checks.
- If you have a safe deposit box or oil and gas royalties, make sure it is listed in your estate and/or make someone aware of the property.

Source: Texas Comptroller of Public Accounts

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About Our Firm ... Call us at (512) 918-3435

Law Offices of Jeanine Lehman P.C. is a Texas law firm headquartered in Austin with a state-wide health law practice, including representation of Texas dentists and physicians. Our health law practice is focused on business law, transactional aspects of individual and group practices, such as contracts and incorporations, office/facility leases, building purchases/condos, and build-to-suits, practice sales/purchases/buy-ins, employment agreements, financing, and consultation concerning the day-to-day legal concerns of running a health care practice. The firm is owned by Texas Attorney **Jeanine Lehman**. Jeanine has been in private practice as the owner of her firm for over 25 years and has over 30 years' experience as a Texas attorney. She has had one book and over 70 articles published. She speaks to professional and business groups concerning legal topics. Jeanine is blessed to have one dentist and three dental hygienists in her family. Contact us at **(512) 918-3435**, jeanine@jeanine.com or PO Box 202211, Austin, TX 78720, and visit our website at www.jeanine.com. Suggestions for future newsletter topics and invitations to speak to professional groups are appreciated!