

DENTAL LEGAL UPDATE

Texas Legislative Update

by Jeanine Lehman, Attorney

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Presumably, the information filed by the DSO's with the Texas Secretary of State will be public information, available to anyone. The Texas Dental Board will have the information, including for enforcement use.

The Texas legislature passed a number of laws that impact dentists. These include major tax relief, repeal of a duplicative permit for prescribing controlled substances, and reporting by Dental Support Organizations. Several laws were proposed and did not pass, including expansion of dental hygiene scope of practice to include anesthesia.

Occupation Tax Repealed

House Bill 7 repeals the occupation tax on 16 professions including dentists and physicians. Dentists are currently subject to an occupation tax at the rate of \$200 per year. Once the repeal takes effect, dentists will save \$200 each year. Physicians will also save at least \$200 per year. Therefore, dentists, who are dual licensees, such as oral maxillofacial surgeons, who are licensed as both dentists and physicians, will save at least \$400 a year.

Dental Support Organization Reports

Senate Bill 519 by Senator Schwertner provides for registration of Dental Support Organizations (DSO's) with the Texas Secretary of State, with information to be shared with the Texas State Board of Dental Examiners. There is also a new definition for what is a DSO. That new definition also applies to the DSO con-

Invitation to Free Webinar

Update on Texas State Board of Dental Examiners 8/14/2015 meeting and Legislature with Jeanine Lehman and Duane Tinker Tues., 8/18/2015: 12 p.m.–1 p.m.

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<https://attendee.gotowebinar.com/register/29820219766250497>

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tract information that dentists provide to the Dental Board with the renewal of their dental licenses.

A DSO is defined as an entity, which provides two or more Business Support Services to a dentist under an agreement. "Business Support Services" means business, management, consulting, or administrative services, facilities, or staff provided for a dentist, including:

- (A) office space, furnishings, and equipment;
- (B) staff employed by the DSO;
- (C) regulatory compliance;
- (D) inventory or supplies, including dental equipment and supplies;
- (E) information systems;

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 Legislature Online
www.capitol.state.tx.us

Texas Constitution
& Statutes
www.statutes.legis.state.tx.us

Legislative Update (cont.) --

- (F) marketing and advertising;
- (G) financial services;
- (H) accounting, bookkeeping, or monitoring or payment of accounts receivable;
- (I) payroll or benefits administration;
- (J) billing and collection for services and products;
- (K) reporting and payment of federal or state taxes;
- (L) administration of interest expense or indebtedness incurred to finance the operation of a business;
- (M) insurance services.

The DSO annual registration with the Secretary of State must include:

- (1) DSO name and business address;
- (2) name and business address of each dentist in Texas, who has an agreement with the DSO for the DSO to provide two or more Business Support Services;
- (3) name of each dentist who owns 10% or more of the DSO;
- (4) name of each person who is not a dentist and owns 10% or more of the DSO; and
- (5) list of all Business Support Services provided to each dentist.

DSO's must also file a corrected registration each quarter as necessary. The Secretary of State will set the filing fees for registrations and corrections. DSO's which fail to file the registrations or corrections are subject to hefty penalties not to exceed \$1,000 a day. Enforcement is by the Texas Attorney General. DSO's are not required to register before February 1, 2016. The new law will cover entities traditionally viewed as DSO's, but may also cover other entities including, for example, consulting firms.

Fortunately, there are exemptions for accountants for accounting services only, attorneys for legal counsel only, insurance companies for insurance policies only, and entities only providing investment/financial advisory services.

Presumably, the information filed by the DSO's with the Texas Secretary of State will be public information, available to anyone. The Dental Board will also have the information, including for enforcement use.

DPS Controlled Substances Permit Repealed

To prescribe controlled substances in Texas, a Controlled Substances Registration with the Texas Department of Public Safety (DPS) and a Registration Under Controlled Substance Act of 1970 with the U.S. Drug Enforcement Agency (DEA) are required. This applies to Texas dentists, as well as other prescribers.

Texas dentists and other health care providers have been encountering significant delays in receiving their DPS controlled substances permits, even when they have timely filed their applications with DPS. This creates a major disruption to patient care and a hardship to dentists and other health care providers.

In a ray of sunshine, the Texas legislature passed Senate Bill 195, which repeals the requirement for the DPS controlled substances permit, provided that dentists and other prescribers

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of controlled substances have a DEA permit to prescribe controlled substances. SB 195 also moves many of the controlled substances duties of the DPS to the Texas State Board of Pharmacy (TSBP). There are a number of transition steps in the new law, so much of the law will not take effect until well into 2016. Therefore, it is prudent to continue to obtain and renew DPS controlled substances registrations, until notification occurs that the DPS permits are no longer required.

The law amends the Health and Safety Code and the Occupations Code concerning prescriptions for certain controlled substances. The provisions of the law transfer the Texas Prescription Monitoring Program (TPMP) and the Prescription Access in Texas (PAT) database from DPS to TSBP. The law requires the transfer of prescription drug registration information from DPS to TSBP and the establishment of an accessible database for this information. The law also authorizes DPS to create a secure portal for independent access to the TPMP database.

The law authorizes TSBP to charge a fee to cover the cost of establishing and maintaining the registration database. Each agency which is covered by this legislation and licenses individuals or entities to prescribe or dispense controlled substances, including the Texas State Board of Dental Examiners, will be directed to increase the fees for occupational licenses, permits, or registrations, or use available excess funds, to operate the database program. A fee so imposed would be remitted to TSBP for the database program.

The law authorizes TSBP to adopt rules providing for certain pharmacists, health care providers, and employees or agents of an eligible practitioner to be enrolled in electronic access to information submitted to the TSBP, relating to prescriptions of certain controlled substances, at the time the person obtains or renews the person's applicable professional or occupational license or registration.

This will make it easier for dentists to enroll in the Prescription Access in Texas program, which helps detect "doctor shopping" and diversion of controlled substances.

Franchise Tax Cut

House Bill 32 reduces the franchise tax rate by 25% and raises the revenue threshold at which entities are eligible to use the EZ computation. This is a major tax cut and will help higher grossing dental practices which operate using a taxable entity, including solo and group dental practices.

The law lowers the franchise tax rate from 1 percent to 0.75 percent for taxable entities not primarily engaged in retail or wholesale trade, such as dental practices. The law lowers the franchise tax rate from 0.575 to 0.331 percent for entities electing to use the EZ computation to determine franchise tax liability. The law increases the maximum total revenue threshold at which entities are eligible to elect the EZ computation from \$10 million to \$20 million.

What Did Not Pass

A number of bills were proposed, but did not pass. They include:

Bills to define "improper influence on professional

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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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Legislative Update (cont.) --

judgment” and to prohibit the Dental Board from adopting rules to prohibit or otherwise restrict a dentist’s right to contract with: (1) a management service organization; or (2) a person for the provision of management services (HB 2330/SB 960)

Bills to create new “Dental Hygiene Practitioner” licensure, with expanded authority including prescription authority, to provide for non-independent “collaborative” practices for Dental Hygienists and Dental Hygiene Practitioners, and to include within the scope of practice of Dental Hygienists anesthesia including administration of intraoral, block, or infiltration anesthesia or inhalation sedations in the form of nitrous oxide under the authorization and supervision of a dentist (HB 1940/SB 787 & SB 571/HB 1409)

Bill Adding Dental Technician as Dental Board Member (HB 2266)

Sunset Review

The Texas State Board of Dental Examiners is scheduled to undergo review by the Texas Sunset Commission. This is a normal process for a Texas state agency and includes a comprehensive review of the agency. The last Sunset review of the Dental Board was in the 2002 – 2003 review cycle. The current review cycle is 2016 – 2017 with legislation to continue the Dental Board and change the

Dental Practice Act to be considered in 2017 in the 85th Legislative Session of the Texas Legislature. For more information and input, go to:

<https://www.sunset.texas.gov/reviews-and-reports/agencies/state-board-dental-examiners-sbde> ■

Texas Dental Board Update

At the May 29, 2015 board meeting, the following actions and discussion occurred:

- Ownership, Maintenance and Operation of Dental Practice Proposed Rule – Rule withdrawn/abled (Rule 108.74)
- Laser Use by Dental Hygienists - Rule Passed (Rule 115.2)
- Community Service added to Disciplinary Matrix
- Working on better process documentation for Informal Settlement Conferences to provide to persons involved in ISCs
- Future rulemaking on Rule 108.54 Advertising of Specialties – currently subject of federal lawsuit
- Redesigned website with August 2015 target date to go live and also new Facebook page in works

Legal Tips:

Consider carrying Employment Practices Liability Insurance to cover your practice against certain employment law claims, including for discrimination. This is a “claims made” policy, meaning the policy needs to be in effect at the time the incident occurred and when the claim occurred.

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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!