

# **Texas Dental Board: Nitrous & Other Anesthesia in the Spotlight**

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# Save Websites

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# Sunset Commission Report

“Dentist board members have pursued high profile rule packages that appear more motivated by business interests than demonstrated concern for public safety; all the while other emerging problems like regulating the administration of anesthesia went largely unaddressed.”

January 2017 Sunset Commission Report

# Anesthesia - Major Board Focus

“Of the 100 anesthesia-related complaints compiled in the review, 41 involve a patient death during or shortly after a dental procedure involving anesthesia. Board reviewers ultimately determine that most of these deaths were unrelated to the supervising dentist performance, but at least 13 of the 41 death cases were found to include violations of the dental standard of care, including inappropriate preparation for or response to anesthesia-related emergencies.”

Sunset staff’s manual review of standard of care complaints to the Board from fiscal year 2011 to mid-fiscal year 2016.

# Sunset Law - Senate Bill 313 (1)

## Major Overhaul of Anesthesia/Sedation

- ▶ Rulemaking - Expanded scope
- ▶ All Forms of Anesthesia
- ▶ Tiered Permits
  - (1) Nitrous oxide
  - (2) Level 1: minimal sedation
  - (3) Level 2: moderate sedation (enteral administration)
  - (4) Level 3: moderate sedation (parenteral administration)
  - (5) Level 4: deep sedation or general anesthesia

# Sunset Law - Senate Bill 313 (2)

- ▶ Education & Training for Level 2, 3 or 4 Permits:
  - ▶ Pre-procedural patient evaluation, including the evaluation of a patient's airway and physical status as classified by the American Society of Anesthesiologists
  - ▶ Continuous monitoring of a patient's level of sedation during the administration of anesthesia
  - ▶ Management of emergency situations
- ▶ Examination - Online Jurisprudence Exam for anesthesia permit holders - must be passed every 5 years

# Sunset Law - Senate Bill 313 (3)

## ▶ Portability

- ▶ Statement on providing permitted anesthesia service in multiple locations on application for issuance or renewal of anesthesia permit

## ▶ Pediatric (under 13) & High Risk Patients

- ▶ Level 2, 3 or 4 permit holders must (1) satisfy Board of having advanced didactic and clinical training and (2) obtain Board authorization to administer anesthesia to these patients

## ▶ Capnography

- ▶ Capnography must be used during anesthesia at level 4 permit level



# Sunset Law - Senate Bill 313 (4)

## ▶ Minimum Emergency Preparedness Rules

All Permit Holders - Emergency Preparedness Standards and Protocols - specific to the permit holder's practice setting, with a plan for management of medical emergencies in each practice setting

(1) Adequate & unexpired supply of drugs & anesthetic agents and automated external defibrillator

(2) Periodic inspections of equipment on Board required schedule

(3) Equipment readiness log maintained and available to Board

(4) Develop and annually update written policies, procedures, and training requirements, specific to the permit holder's equipment and drugs, for responding to emergency situations involving anesthesia

# Sunset Law - Senate Bill 313 (5)

## ▶ Minimum Emergency Preparedness Rules

### Level 2, 3 and 4 - Additional Requirements for Policies/Procedures

(1) advanced cardiac life support rescue protocols

(2) advanced airway management techniques

(3) if the permit holder is authorized to administer anesthesia to pediatric patients, pediatric advanced life support rescue protocols

# Sunset Law - Senate Bill 313 (6)

## ► Inspections Required

- May include inspections of an office site, equipment, a facility, and any document of the dentist
- Board may evaluate dentist competency in the administration of anesthesia
- No notice is required
- Board is required by rule to adopt a risk-based inspection policy for conducting inspections. To take into account previous disciplinary action taken against a permit holder for an anesthesia-related violation.
- Dentists holding level 2, 3 or 4 must be inspected no later than one year after date permit is initially issued.
- Except if level 2, 3 or 4 permit issued prior to 9/1/2017, Board must inspect no later than 9/1/2022

# Sunset Law - Senate Bill 313 (7)

## Advisory Committee on Dental Anesthesia.

Board appointed six-person committee to analyze and report to Board by 11/30 annually on data and trends concerning anesthesia-related deaths and incidents.

Members must include:

- ▶ general dentist
- ▶ dentist anesthesiologist
- ▶ oral and maxillofacial surgeon
- ▶ pediatric dentist
- ▶ physician anesthesiologist
- ▶ periodontist

# Anesthesia - Adopted Rules (1)

## Emergency Preparedness.

New Rule 108.15 requires dentists to maintain and annually update written policies and procedures for responding to emergency situations.

Effective 12/25/2016

# Anesthesia - Adopted Rules (2)

## Additional Continuing Education Requirement.

New Rule 111.1 requires each dentist, who is permitted by the Drug Enforcement Agency to prescribe controlled substances, to complete at least two hours of continuing education in the abuse and misuse of controlled substances, opioid prescription practices and/or pharmacology, every three years. This continuing education may be used to fulfill the annual licensure renewal continuing education requirements.

Effective 12/25/2016

## Anesthesia - Adopted Rules (3)

### Self-query of Prescription Monitoring Program.

New Rule 111.2 requires each dentist, who is permitted by the DEA to prescribe controlled substances, to annually conduct at least one self-query regarding the issuance of controlled substances through the Prescription Monitoring Program of the Texas State Board of Pharmacy.

Effective 12/25/2016

# Anesthesia - Proposed Rules (1)

## Portability.

### Rule 110.7

- ▶ Eliminates need for portability permit.
- ▶ Instead, portability is stated on application for issuance or renewal of sedation/anesthesia permit.
- ▶ After strong opposition from dental community, Board expected to drop proposed requirement to list address of every location at which dentist would provide portable sedation/anesthesia.

Proposed 2/23/2018 at Board Meeting



# Anesthesia - Proposed Rules (2)

- ▶ 110.13 Pre-Operative Sedation/Anesthesia Checklist
- ▶ 110.14 Emergency Preparedness Policies and Procedures
- ▶ 110.15 Prevention of Sedation/Anesthesia Emergencies

Proposed 2/2/2018

# Anesthesia - Proposed Rules or Rules Being Written

- ▶ New Rules
  - ▶ 110.16 Sedation/Anesthesia of High-Risk Patients
  - ▶ 110.17 Sedation/Anesthesia of Pediatric Patients (under age 13)
  - ▶ 110. 18 Sedation/Anesthesia Inspections
- ▶ Amendments to Rules 110.1 - 110.9

# Preoperative Sedation/Anesthesia Checklist

## Proposed Rule 110.13

- ▶ Applies to Nitrous Oxide and Levels 1, 2, 3, 4 Sedation/Anesthesia
- ▶ Separate Document in Patient Record titled “Preoperative Sedation/Anesthesia Checklist” created by
  - ▶ dentist administering sedation/anesthesia or
  - ▶ other delegated provider allowed to administer sedation/anesthesia under provisions of Section 258.001(4) of Dental Practice Act

# Preoperative Sedation/Anesthesia Checklist (2)

## Proposed Rule 110.13

Checklist must include for each level of sedation/anesthesia (including Nitrous) documentation of:

### (1) Medical history including

- ▶ review of patient medical history,
- ▶ review of patient allergies,
- ▶ review of patient surgical and/or anesthesia history,
- ▶ review of family surgical and/or anesthesia history, and
- ▶ review of patient medications and any modifications

(2) Confirmation that written and verbal preoperative and postoperative instructions were delivered to patient, parent, legal guardian, or caregiver

(3) Medical consults, as needed

# Preoperative Sedation/Anesthesia Checklist (3)

## Proposed Rule 110.13

### (4) Physical examination:

- ▶ Society of Anesthesiologist Physical Status Classification (ASA) classification
- ▶ NPO Status
- ▶ Preoperative vitals, including height, weight, blood pressure, pulse rate, and respiration rate

### (5) Anesthesia-specific physical examination:

- ▶ Airway assessment, including Mallampati score and/or Brodsky score
- ▶ Auscultation

### (6) Confirmation of pre-procedure equipment readiness check

# Preoperative Sedation/Anesthesia Checklist (4)

## Proposed Rule 110.13

(7) Confirmation of pre-procedure treatment review (correct patient and procedure)

(8) Special preoperative considerations for pediatric or high-risk patients

(9) Documentation of reason for omission of any item required for inclusion in checklist

**Note: Checklist information may be collected at any time, but dentist must verify information is current and correct prior to administration of sedation/anesthesia.**

# Emergency Preparedness Policies & Procedures

## Proposed Rule 110.14

- ▶ Applies to all permit holders, including nitrous oxide
- ▶ Written emergency preparedness policies & procedures with plan for management of medical emergencies in each practice setting sedation/anesthesia administered
- ▶ Written protocols, policies, procedures, and training specific to equipment and drugs for responding to emergencies, including respiratory

# Emergency Preparedness Policies & Procedures

Proposed Rule 110.14

(2)

Include, at a minimum:

- ▶ Specific protocols for response to a sedation/anesthesia emergency, including advanced airway management techniques
- ▶ Staff training log, showing training in emergency prevention, recognition, and response on at least an annual basis



# Emergency Preparedness Policies & Procedures

Proposed Rule 110.14

(3)

Include, at a minimum (cont):

- ▶ Emergency drug log documenting annual reviews for assurance of unexpired supply
- ▶ Equipment readiness log indicating annual reviews for assurance of function of required equipment
- ▶ Individual office staff roles and responsibilities in response to an emergency, including specific to respiratory emergency

# Prevention of and Response to Sedation/Anesthesia Emergencies (1)

Proposed Rule 110.15

## Immediately Available Drugs:

- ▶ Adequate and unexpired supply of appropriate drugs and anesthetic agents, including but not limited to pharmacologic antagonists and resuscitative drugs

# Prevention of and Response to Sedation/Anesthesia Emergencies (2)

Proposed Rule 110.15

## Immediately Available Equipment:

- ▶ Automated external defibrillator
- ▶ Positive pressure ventilation device
- ▶ Supplemental oxygen
- ▶ Stethoscope
- ▶ Pulse oximeter

# Prevention of and Response to Sedation/Anesthesia Emergencies (3)

## Proposed Rule 110.15

- ▶ Sphygmomanometer or automatic blood pressure monitor
- ▶ Oxygen delivery system with full face mask and connectors for high flow oxygen to patient under positive pressure, with backup system

# Prevention of and Response to Sedation/Anesthesia Emergencies (4)

## Proposed Rule 110.15

- ▶ Suction equipment for aspiration of oral and pharyngeal cavities and a backup suction device to use in the event of general power failure
- ▶ Lighting system to evaluate patient's skin and mucosal color, with backup for general power failure

# Prevention of and Response to Sedation/Anesthesia Emergencies (5)

## Proposed Rule 110.15

- ▶ Precordial/pretracheal stethoscope, size-and-shape appropriate advanced airway device, intravenous fluid administration equipment, and/or electrocardiogram, consistent with requirements of rules 110.3 through 110.6

# Prevention of and Response to Sedation/Anesthesia Emergencies (6)

## Proposed Rule 110.15

- ▶ Dentist administering sedation/ anesthesia for which a Level 4 permit is required must use capnography during sedation/ anesthesia administration
- ▶ At least annual inspection and log
  - ▶ Emergency drug supply
  - ▶ Equipment

# Compliance

- ▶ Rules will probably be immediately effective after vote and publication.
- ▶ Prudent to read proposed rules and set up systems for compliance with proposals, and update as final rules are adopted.
- ▶ Rules are minimum standards. Additional safeguards can be used.



# Reporting Death/Hospitalization Consequence of Dental Services

- ▶ Death - report to Dental Board within 72 hours
- ▶ Hospitalization - report to Dental Board within 30 days

From when dentist becomes aware or should have reasonably become aware

TSBDE Rule 108.6

# Opioid Epidemic

Opioid-involved overdose deaths, including prescription opioids and illicit opioids, have more than quadrupled since 1999. The opioid overdose epidemic killed over 33,000 Americans in 2015.

CDC Annual Surveillance Report of Drug-Related Risks and Outcomes - 2017

# Opioid Epidemic (2)

Prescription Monitoring Program Database:  
9/1/2019 onward, Dentists and other  
Prescribers must check database for patient  
before prescribing or dispensing:

- ▶ Opioids
- ▶ Benzodiazepines
- ▶ Barbiturates
- ▶ Carisoprodol

Concern: “Doctor Shopping”

2017 Texas Pharmacy Board Sunset Bill - HB 2561

# Opioid Epidemic (3)

## Opioid Antagonists Prescribed with Opioids - Texas Legislature

2015: Texas Health and Safety Code Sec. 483.101 - expands ability to prescribe, possess and administer opioid antagonists

2017: SB 584 instructs Texas Medical Board to adopt guidelines for prescribing opioid antagonists with opioids - by Senator West

# Bonus - If Time

## Sunset Law - Senate Bill 313

- ▶ Board reauthorized for 12 years
- ▶ Board Size Reduced - from 15 to 11 members - 6 dentists, 3 hygienists, 2 public members (rejected initial Sunset Report to have dentist minority)
- ▶ Dental Review Committee - 9 governor appointed members (6 dentists, 2 hygienists, 1 RDA) to serve at Informal Settlement Conferences
- ▶ RDAs - Registration dropped for Pit & Fissure Sealants and Coronal Polishing. Board has voted to require education to provide those services. One registration still required to:
  - ▶ Make X-rays
  - ▶ Monitor Nitrous Oxide

# Sunset Law - Senate Bill 313

- ▶ Complaints - “Anonymous Complaints” no longer accepted
- ▶ Data Bank - National Practitioner Data Bank reports need to be reviewed
- ▶ Records Custodian - Board may adopt rules for appointing records custodian of dentist’s billing and patient records
- ▶ Mental or Physical Exam - On probable cause, Board may require license holder to submit to such exam

# About Jeanine Lehman

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 practice sales/purchases/buy-ins, contracts and incorporations, office/facility leases, building purchases/condos, and build-to-suits, 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.

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