

# DENTAL LEGAL UPDATE

## Unclaimed Property: Patient Credit Balances, Preparing for Practice Sale, 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 (Comptroller). The unclaimed property law affects dental practices in several 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. Third, credit balances need to be addressed in the sale of a dental practice. Unclaimed property is property presumed to be abandoned.

### 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 a prior Unclaimed Property Reporting Requirements Manual, the Comptroller’s office noted: “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.” However, it should be noted that even if such credit balances are not yet reportable, refunds

of owed credit balances, including to patients, should be promptly made.

Dental practices also may hold unclaimed property of employees for wages, which have a one year abandonment period, for example a payroll check that was not cashed. In addition, there may be other types of unclaimed property held.

### Reporting Test

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

As of the immediate past March 1<sup>st</sup>:

1. The property has remained unclaimed for at least three years (one year if wages).
2. There has been no contact with the owner during the abandonment period.

Contact with the owner may be established by mail, email, accessing an online account, in person or by phone. Phone contact must be documented in writing with the date and time of the conversation. The fact that mail is not returned to the holder by the post office does not, by itself, qualify as con-

**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](mailto:jeanine@jeanine.com)

**Website Favorites**

Law Offices of  
Jeanine Lehman P.C.  
[www.jeanine.com](http://www.jeanine.com)

Capital Area Dental Society  
[www.capitalareadental.org](http://www.capitalareadental.org)

Texas State Board of Dental  
Examiners  
<https://tsbde.texas.gov/>

Texas Dental Association  
[www.tda.org](http://www.tda.org)

Texas Academy of  
General Dentistry  
[www.tagd.org](http://www.tagd.org)

American Dental Association  
[www.ada.org](http://www.ada.org)

Texas Unclaimed Property  
<https://claimittexas.org/>

National Assoc. of Unclaimed  
Property Administrators  
[www.unclaimed.org](http://www.unclaimed.org)

**Unclaimed Property (cont.) --**

tact with that owner or activity on the account.

See the Texas Unclaimed Property Reporting Instructions for helpful information, including on whether contact with the property owner has occurred: <https://claimittexas.org/docs/96-478.pdf>

**Reporting**

Holders of unclaimed property, for example, dental practices, are required to mail or email a notice by May 1<sup>st</sup> 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 \$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, aggregate reporting is discouraged by the Comptroller; the more detail reported, the more property is potentially returnable.

Effective June 10, 2019, holders that have previously filed unclaimed property reports are required to file a report annually, even if they have no unclaimed property. Such holders that have determined that they are not holding abandoned property are still required to file a negative report also known as a continuing reporting requirement.

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) the name and last known mailing or email address of any person designated as a representative for notice;
- (3) 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;
- (4) the date that the property became payable, demandable, or returnable;
- (5) the date of the last transaction with the owner concerning the property; and
- (6) 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 records of unclaimed property for 10 years from the later of the date on which the property is reportable or the date that the report was filed.

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 Associa-

**Unclaimed Property (cont.) --**

tion 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 has noted in 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. 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." It is wrong to just absorb credit balances into income.

In 1987, in Texas Property Code, Section 74.308, 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.

In 2019, in Texas Property Code, Section 74.7021, a 7 year limitation period for examination was added for unclaimed property reports that were filed, which limits examinations by the Comptroller or Texas Attorney General. However, that limitation on examinations does not apply if there was a false or fraudulent report, a report has not been filed, or a court compels a person to submit to an examination (audit), deliver property, or file a property report. It is presumed that a report is false and fraudulent, if it under-reports by at least 25%.

**Interest & Penalties**

Sections 74.705 of the Texas Property Code provides that a person who fails to pay or deliver unclaimed property on time shall pay interest from the date the property should have been paid or de-

livered until the date it is actually paid or delivered to the Comptroller's Office. The current interest rate is 10% per year. Plus, under section 74.706 of the Texas Property Code, the current penalty of an additional 5 – 10% of the value of the unclaimed property applies for late payment or delivery to the Comptroller of unclaimed property. The Comptroller will calculate interest and penalties, which can be significant.

**Preparing for Practice Sale**

Proper handling of your credit balances prior to the sale of your dental practice is recommended. Refunds to patients and others should be made in a timely manner and to the extent possible, prior to the practice sale. Policies and procedures should have been established and followed. Expect to report on credit balances liabilities to the buyer of your dental practice and have the credit balances addressed in the dental practice sale.

**Embezzlement of Credit Balances**

Dental patient credit balances and inactive patient accounts create several opportunities for embezzlement schemes. The Texas Comptroller of Public Account'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. Inter-

*continued on page 4*

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**Past issues of the Dental Legal Update are available at [www.jeanine.com](http://www.jeanine.com)**

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**Unclaimed Property (cont.) --**

nal control must be evaluated and appropriate comments included in the audit plan.”

**Licensure Problems with Credit Balances**

In 2019, the Texas Medical Board disciplined a medical doctor for not acting diligently to ensure that refunds were given to patients in a timely manner, and failing to send un-refunded money to the Comptroller as required by law. The doctor paid a \$1,000 penalty and agreed to have his billing practices monitored and take continuing education courses on billing and record keeping.

**Recall Patients with Credit Balances**

Practices can apply credit balances to current charges when seeing a patient and discuss and document the same. Also, credit balances may be helpful in recalling patients. 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. Also, due to mailbox theft, rather than mailing a check, as a courtesy, the patient may be called and asked if he would like to pick up the check at the practice. If the payment was made by credit card, the credit card processing agreement may require refunds to be made via a credit to the credit card and it is prudent to check that such credit card is current. The dentist should maintain records of the payment of refunds.

**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 <https://claimitexas.org/> 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.

For history – Since the unclaimed property program began in 1962, the Texas Comptroller’s office has returned more than \$3 billion to owners.

**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. ■

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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 Round Rock 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. Contact us at **(512) 918-3435**, [jeanine@jeanine.com](mailto:jeanine@jeanine.com) or PO Box 7965, Round Rock, TX 78683, and visit our website at [www.jeanine.com](http://www.jeanine.com). Suggestions for future newsletter topics and invitations to speak to professional groups are appreciated!