

DENTAL LEGAL UPDATE

Sick Leave Preemption Bill Dies

by Jeanine Lehman, Attorney

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In the 2019 Texas Legislature, legislation was proposed to preempt city ordinances which regulate the workplace. There was concern that a patchwork of local labor laws would hurt Texas businesses – especially small businesses. The legislation, if passed, would have preempted city ordinances for paid sick leave, as well as other ordinances. The legislation stalled, due to concern that it could adversely affect anti-discrimination ordinances, including those protecting LGBTQ persons. The legislation failed to pass.

The Austin ordinance mandating paid sick leave by private employers is being litigated. In August 2017, The Texas Third Court of Appeals placed a stay on the enforcement of the ordinance. In response to that stay, the City of Austin temporarily postponed the effective date for the Earned Sick Time Ordinance, No. 20180215-049. When this article is being written, there is no indication on Austin’s website that the temporary postponement has been discontinued. The Third Court of Appeals, on November 16, 2018, ruled that the Austin ordinance violated the Texas Mini-

mum Wage Act and was therefore unconstitutional. That ruling of the Third Court of Appeals has been appealed by the City of Austin to the Texas Supreme Court. At the time this article is being written, it is unknown what the Texas Supreme Court will do. San Antonio and Dallas also have sick leave ordinances, which will be impacted by a Texas Supreme Court decision.

For further background on the City of Austin sick leave ordinance, see the December 2018 issue of the Dental Legal Update at www.jeanine.com

Legislative Relief for Student Loans. Taking effect June 6, 2019, Senator Zafirini’s Senate Bill 37 gives relief to Texas licensees, including dentists, dental hygienists, and registered dental assistants, who are struggling with student loan debt. This new law prohibits a Texas licensing authority (including the Texas State Board of Dental Examiners) from taking disciplinary action against a person based solely on the person's default on a student loan from a public or

The Austin ordinance mandating paid sick leave by private employers is being litigated.

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
tsbde.texas.gov

Texas Dental Association
www.tda.org

Texas Academy of
General Dentistry
www.tagd.org

American Dental
Association
www.ada.org

U.S. Department of Labor
Wage and Hour Division
www.dol.gov/whd

Student Loan Relief (cont.)--

private entity, or breach of a student loan repayment contract or scholarship contract, including by denying the person's application for a license or renewal, or by suspending the person's license. The author's note states: "Texas is one of 19 states that can bar professional license holders, including teachers, social workers, nurses, physicians, and attorneys, from renewing their professional licenses if they are in default on student loans. Proponents of these laws when they were created believed them to be in the taxpayer's interest, as many student loans are guaranteed by the state or federal government, which foots the bill if borrowers default. In reality, however, such laws often have been counterproductive. By threatening a person's ability to work by suspending or failing to renew his or her professional license, such policies not only threaten a person's employment and financial security, but also inhibit his or her ability to repay the student loan debt. Such tactics are especially unnecessary today, when lenders and loan guarantors have an array of tools they could use to pressure borrowers into repayment, including by creating repayment plans, filing lawsuits, garnishing wages, and seizing tax refunds."

Authorization for Sale of Hobby Building. The Texas Legislature authorized the sale of the building where the Texas State Board of Dental Examiners

is located. Senate Bill 1349 authorizes the sale of the state facility in downtown Austin known as the Hobby Building due to the poor condition of the building, significant deferred maintenance obligations, and increasing annual investments necessary to maintain habitability.

The William P. Hobby building was built in 1984 (35 years ago), when building technologies and standards were significantly less demanding than today. Texas Facilities Commission (TFC) staff estimates that the building requires at least \$49.6 million in repairs for known deficiencies and has requested \$19 million for the coming biennium to meet priority health and life safety needs including fire protection and security system updates and failing cast iron plumbing. If and when a sale of the building occurs, the Dental Board will face disruption if a move is necessary.

What Did Not Pass. Here are some of the bills that did not pass in the 2019 Texas Legislature:

- Senate Bill 792: Teledentistry
- House Bill 3152: Requirement for one Board member of Texas State Board of Dental Examiners to be a pediatric dentist
- Senate Bill 510 and House Bill 2275: Local anesthesia administration by dental hygienists

New Hire Reporting. Federal and State law requires all employers, including dental practices, to report new hire and rehires within 20 calendar days of the hire date. Reporting new hires and rehires assists the Texas Workforce Commission in detecting and preventing fraud within the Unemployment Insurance (UI) system. Using the new hire information, TWC can identify UI claimants who have returned to work to ensure earnings are reported. If employers fail to report new hire information, TWC cannot identify these claimants until the employer files its quarterly UI taxes. This delay in reporting increases the average overpayment from approximately \$411 to \$924 per claim.

Reporting new hires prevents unnecessary payments of UI benefits, which reduces taxes that employers pay. Reporting new hires means more savings for all Texas employers by preventing overpayment of benefits. In addition, reporting new hires and rehires to the Office of Attorney General (OAG) helps the state hold parents accountable for delinquent child support.

There are several ways to report this information. Visit the OAG's website to choose the option that is best for your practice:

www.employer.texasattorneygeneral.gov

Proposed Change to Overtime Law. The U.S. Department of Labor (DOL) proposed in late 2016 to increase the minimum salary requirement for a salaried exempt employee to \$913 per week, but that regulation was invalidated by a court decision in 2016. On March 7, 2019, the DOL announced a new rule proposing a smaller increase, from \$455/week, which was set in 2004, to \$679/week. The DOL estimated that a million more American workers would be eligible for overtime if this proposal is adopted. More infor-

mation about the proposed rule is available at www.dol.gov/whd/overtime2019. Check the DOL website at www.dol.gov/whd for updates on the progress of the rule and guidance on wage and hour regulations, including for payment of overtime. Be ready to comply if the rule changes and your practice has salaried exempt employees. Be sure to note that the salary level, alone, is not enough to make an employee exempt from overtime pay. Instead, all the requirements for an exempt salaried employee must be satisfied.

Dental Board Update

At the May 17, 2019 Board meeting of the Texas State Board of Dental Examiners, much was covered including the following:

New Website. The Texas State Board of Dental Examiners has a new website. It is located at tsbde.texas.gov. The website is a major redesign to enhance user friendliness. Feedback on the new website is encouraged.

Anesthesia Amendments. An amendment to Rule 110.17 on sedation/anesthesia of pediatric patients was adopted to clarify the requirements for training related to observation of live cases and high-fidelity

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Dental Board Update (cont.) --

sedation simulator cases. The intent of this amendment is to ensure that course providers may use high-fidelity sedation simulators in appropriate situations. An amendment to Rule 110.18 on inspection of sedation/anesthesia was also adopted. That amendment provides, if, after a completed Compliance/Tier 1 inspection, the only violation(s) identified by Board staff relates to failure to satisfy specified time-interval recording requirements, the violation(s) may be remedied by execution of a sworn affidavit provided by Board staff. The affidavit will indicate that the permit holder will observe the requirements of the applicable sedation/anesthesia rule sections requiring time interval recording for each permit level the permit holder holds.

Nitrous Oxide Monitoring. The Board referred a nitrous oxide monitoring matter to the anesthesia committee. The committee is to work with staff and stakeholders to address dental auxiliaries turning nitrous oxide anesthesia down or off.

Pediatric and Special Needs Case Management. The Board adopted amendments to Rule 108.14 concerning pediatric and special needs case management and protective stabilization. This amendment to the

existing rule updates and clarifies the applicability of the rule in light of changes to the guidelines published by the American Academy of Pediatric Dentistry and stakeholder comment.

Baseless or Unfounded Complaints. The Board adopted rule 107.110 concerning baseless or unfounded complaints. This rule establishes a procedure to dismiss baseless or unfounded complaints.

Disciplinary Matrix. The Board approved the modified Disciplinary Matrix.

Fees. The Board discussed the need to address a change in fees to include in Rule 102.1 due to new and changed expenses. The Prescription Monitoring Program (PMP) is changing its assessment, which is collectible from the Board. The Board will also incur charges for the use of the Texas.gov portal and fees for the National Practitioner Database. A proposal for rulemaking is expected on fees at a future date.

Silver Diamine Fluoride Restriction. The Dental Practice Committee recommended possible action on petition for rulemaking concerning restriction of the use of silver diamine fluoride to dentists and registered dental hygienists. The Board directed the staff to draft language for a possible rule to be discussed at the next Board meeting.

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About Our Firm ...

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, build-to-suits and real estate law, 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 over 25 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