

# DENTAL LEGAL UPDATE

## Texas Teledentistry Rule Adopted

by Jeanine Lehman, Attorney

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**For teledentistry, amended rule 108.7 concerning in-person patient examinations, was the subject of much debate, especially concerning orthodontics.**

To increase access to care, in 2021, the Texas legislature passed House Bill 2056, which allows teledentistry in Texas beginning September 1, 2021. On May 13, 2022, the Texas State Board of Dental Examiners (TSBDE) adopted new rule 108.16 “Teledentistry” and amended rule 108.7 on minimum standard of care, both of which are effective on June 2, 2022.

Amended rule 108.7 concerning in-person patient examinations, was the subject of much debate, especially concerning orthodontics. That amended rule requires that each dentist shall: “perform and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination should be performed and reviewed annually.” The publication of the adoption of this amended rule includes clarification that: “This adopted amendment changes §108.7(3) - (4) to allow for the provision of teledentistry dental services without requiring an in-

### Dental Practice Sale: Role of Commercial Real Estate Broker

When selling a dental practice, the commercial real estate broker is a key team member. A reader pointed out that this was not covered in my June 2022 issue of the Dental Legal Update on Selling Your Dental Practice. Mea culpa and thanks for the feedback!

The real estate broker is key for negotiating, advising and transitioning the dental office lease or, in the case of a sale of real estate, the dental office condo or building, in conjunction with the attorney. There are many complexities to address for the protection of both the seller and the buyer. These include addressing significant continuing liabilities of the selling practice and selling dentist, and methods to obtain releases of such liabilities when feasible. Market conditions, terms of the lease, length of the lease, due diligence concerning the real estate, obtaining terms that are satisfactory to the buyer’s banker, and much more should be addressed.

Keep your comments coming!

person examination prior to  
*continued on page 2*

**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  
[www.tsbde.state.tx.us](http://www.tsbde.state.tx.us)

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 Legislature Online  
[capitol.texas.gov](http://capitol.texas.gov)

**Texas Teledentistry Rule (cont.) --**

providing the service as long as the dentist adheres to the standard of care. A dentist must ask the patient to come into the office for a physical examination if the diagnosis or treatment utilizing teledentistry is not adequate or consistent with the standard of care." TSBDE can take disciplinary action for failure to comply with the standard of care.

TSBDE rule 108.16 "Teledentistry" mirrors the provisions of House Bill 2056 and is applicable to a "Teledentistry dental service". A Teledentistry dental service is a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification, to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

Highlights are:

- Dental health professionals providing teledentistry are:
  - Subject to same standard of care applicable to service in an in-person setting
  - Must establish practitioner-patient relationship
  - Must maintain complete and accurate dental records
- A dentist may simultaneously delegate to and supervise through teledentistry dental service not more than five non-dentist health professionals
- Compliance with federal and state privacy laws is required (including but not limited to HIPAA)
- An individual may provide any photography or digital images to a Texas licensed dentist or Texas licensed dental hygienist for the sole and limited purpose of screening, assessment or examination
- In addition to the informed consent requirements in §108.7 of and §108.8 of the TSBDE rules, dentists must
  - A dentist, dental hygienist or dental assistant must hold an active TSBDE license or registration
- Dentists using teledentistry must adopt protocols to prevent fraud and abuse for teledentistry
- Notice to patients of how to file a complaint with TSBDE must be provided in accordance with TSBDE rules
- A dentist, dental hygienist or

provide additional detailed information in the informed consent provided to patients and if there is delegation of services, the informed consent must cover delegation of services, including the following which must be publicly displayed and provided in writing to the patient:

- The delegating dentist's name, Texas license number, credentials, qualifications, contact information, and practice location involved in the patient's care.
- The name, Texas license number, credentials, and qualifications of all dental hygienists and dental assistants involved in the patient's care.
- Dentists must satisfy all requirements for prescriptions.

The validity of a prescription issued as a result of a teledentistry dental service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting. These include, but are not limited to, being issued for a legitimate dental purpose by a practitioner as part of a patient-practitioner relationship as set out in the Texas Occupations Code, and meeting all applicable laws and rules before prescribing, dispensing, delivering, or administering a dangerous drug or controlled substance.

- Strict limitations are placed on prescriptions of “controlled substances” . When prescribing a controlled substance to a patient as a teledentistry dental service, a dentist must not prescribe more than is necessary to supply a patient for:

- (A) a two-day period, if the prescription is for an opiate; or
- (B) a five-day period, if the prescription is for a controlled substance other than an opiate.

For each day in a period described above that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday.

If dentists plan to use teledentistry dental services in their practices, it is prudent to read House Bill 2056 and the TSBDE rules, including new rule 108.16 and amended rule 108.7 and seek legal advice, as needed. HB 2056 has additional provisions including changes to Texas laws, concerning payment for teledentistry services. Also, there is the overriding question of whether or not the standard of care will be satisfied by the provision of a particular service or procedure via teledentistry instead of in-person.

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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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## Certain Employers Experiencing Unemployment Tax Rate Increase from the Pandemic Have Opportunity for Chargeback Protest Review

On May 26, 2022, the Texas Workforce Commission issued a press release indicating that the TWC would be notifying certain Texas employers of potential relief from chargebacks resulting from unemployment benefits paid due to COVID-19. These employers have higher Texas unemployment taxes due to the chargebacks. These employers are those, who had employees separate from work during the two years leading up to the March 2020 pandemic, and were not the most recent employer of a former employee filing for unemployment benefits. Here are the details.

AUSTIN – On Tuesday, May 24, 2022, the Texas Workforce Commission (TWC) approved notifying certain employers of their opportunity to address unemployment insurance account chargebacks incurred during the early stages of the pandemic. Those employers will have the chance to respond to notices of maximum potential chargeback and charges assessed during the period of March 2, 2020, to December 31, 2020.

Unemployment benefit chargebacks are amounts of paid unemployment benefits charged to an employer's

tax account to calculate the employer's unemployment tax rate. During the early stages of the pandemic, statements were released by TWC indicating employer accounts would not be charged for benefits that were paid due to COVID-19. While most employers had their accounts protected for employees who separated from work post-COVID, the same was not true for employers who had employees separate from work during the two years leading up to March 2020. These non-Last Employing Units (LEU) employers had their accounts charged or protected using the traditional process, without the additional protections associated with the pandemic. A non-LEU is an employer identified as an employer prior to the most recent employer in which a claimant is filing for benefits.

The TWC Unemployment Insurance Division will contact qualifying employers directly about the opportunity to file their protest or appeal. Any employer that receives such a notice should carefully follow the instructions for responding. Determinations will be issued for protests and, where applicable, employers will be given an opportunity for a hearing where timeliness of protest and chargeback to their account would be addressed.

For more information about unemployment claim management and appeals, you can visit the TWC website:

<https://www.twc.texas.gov/businesses/employer-unemployment-benefit-chargebacks>

**Have you moved?  
Please send us a  
change of address  
to receive future  
issues.**

**Please share this  
newsletter with  
your dentist  
colleagues, office  
manager, and  
advisors.**

**Thanks!**

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## About Our Firm ...

**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, 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](mailto:jeanine@jeanine.com) or PO Box 7965, Round Rock, TX 78683, and visit our website at [www.jeanine.com](http://www.jeanine.com)