

# DENTAL LEGAL UPDATE

## Teledentistry: Time or Time Out?

by Jeanine Lehman, Attorney

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**Pandemic shutdowns and hesitancy to go to the doctor caused an increased interest in telehealth.**

The spotlight is on teledentistry, but is it Time or Time Out? Telehealth has been expanding during the pandemic. Pandemic shutdowns and hesitancy to go to the doctor caused an increased interest in telehealth. The Feds answered the call in March 2020 by loosening HIPAA enforcement standards to allow for use of everyday communications technologies, like FaceTime or Skype, during the COVID-19 nationwide public health emergency.

**New Law.** In 2021, the Texas Legislature passed House Bill 2056 which allows the provision of teledentistry services in Texas beginning 9/1/2021. That said, rules implementing the new law will probably not be in place until 2022.

**Definition.** “Teledentistry dental service” is defined as “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.”

**Rulemaking.** Under HB 2056, the Texas State Board of Dental Examiners (TSBDE) is required to adopt several rules no later than March 1, 2022. At the September 10, 2021 TSBDE Board meeting, the Board discussed the proposal of two new rules, namely, Rule 108.16 concerning teledentistry and Rule 108.74 concerning requirements for call coverage agreements between dentists.

TSBDE, in consultation with the Texas Commissioner of Insurance, as appropriate, may adopt rules necessary to:

- (1) ensure that patients using teledentistry receive appropriate, quality care;
- (2) prevent abuse and fraud in the use of teledentistry, including rules for the filing of claims and maintenance of records in connection with teledentistry;
- (3) ensure adequate supervision

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**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  
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[www.jeanine.com](http://www.jeanine.com)

Capital Area Dental Society  
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Dental Examiners  
[tsbde.texas.gov](http://tsbde.texas.gov)

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

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

American Dental  
Association  
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**Teledentistry (cont.) --**

- of health professionals, who are not dentists and who provide teledentistry under the delegation and supervision of a dentist; and
- (4) authorize a dentist to simultaneously delegate to and supervise through teledentistry not more than five health professionals who are not dentists.

**Standard of Care.** HB 2056 provides that the standard of care that applies to teledentistry is the same that would apply to the provision of the same health care service or procedure in an in-person setting. TSBDE already has standard of care requirements in its current Rule 108.7. These include to maintain and review an initial medical history and perform a limited physical evaluation for all dental patients. A major question is if the physical exam needs to be done before teledentistry. If yes, that could limit access to teledentistry. One purpose of teledentistry is to increase access to care, including in rural areas and for special needs patients. That said, the question arises if proper care can be provided to a dental patient without a limited physical evaluation. During the discussion concerning the TSBDE rules, a Board member contrasted the difference between a physician radiologist reviewing scans with a patient via telemedicine and the practice of

dentistry. Another example given was if a teledentistry exam could adequately determine if a stain on a tooth is evidence of decay.

**Informed Consent.** A dentist providing teledentistry must ensure that informed consent is obtained from the patient, or other authorized individual making healthcare decisions for the patient, before teledentistry services are provided. Also, a dentist, who delegates teledentistry, must ensure that the informed consent of the patient includes disclosure to the patient that the dentist has delegated the service.

**Public Interest.** At the September 2021 Board meeting, there was live public comment from several persons, including representatives of two clear aligner companies, a general dentist from Missouri who uses and consults on teledentistry, and a Texas dentist with a mobile practice treating geriatric and special needs patients.

**Hygiene.** Under HB 2056, a dental hygienist who practices dental hygiene as a teledentistry dental service is practicing in an alternate setting in compliance with section 262.152 of the Texas Occupations Code. Thus, teledentistry became an allowed alternate setting, joining previously allowed alternate settings, including a nursing home,

the patient's home, a school, a hospital, a state institution, a public health clinic, or another institution, under the supervision of a supervising dentist.

**Licensure.** HB 2056 provides that "A health professional providing a health care service or procedure as a teledentistry dental service is subject to the licensing requirements that would apply to the provision of the same health care service or procedure in an in-person setting." In the Board's discussion, there was indication that to perform Texas teledentistry a Texas license would be needed. There was also discussion of the potential difficulties faced by dental practices in border towns.

**Insurance.** Under HB 2056, amendments to the Texas Insurance Code take effect on 1/1/2022, including provisions for insurance coverage of teledentistry services. These amendments include a provision that a health benefit plan is not required to provide coverage for the teledentistry dental service provided by only audio interaction, including, audio-only telephone consultation, a text-only E-mail message, or a facsimile transmission. This Insurance Code provision clarifies that a visual component is necessary – so a phone call alone is not sufficient.

**Prescriptions.** TSBDE and the Texas Pharmacy Board are also required to adopt rules jointly for determination of a valid prescription provided via teledentistry no later than March 1, 2022. In HB 2056, there are also limitations on the prescription of controlled substances as a teledentistry service and TSBDE is tasked with adopting rules on such prescriptions no later than March 1, 2022. Careful attention to the

provisions of this new law and the actions of TSBDE and the Texas Pharmacy Board is necessary. (Watch this space for updates.)

**Fast Track.** TSBDE will be on a fast track to adopt rules as mandated by HB 2056. The rules discussed at the Board meeting will need to be published in the Texas Register for public comment. Another stakeholder meeting is likely. Then, a Board meeting will be needed to vote on the rules. Approval by the Governor's Office will also be needed. The rules will probably be adopted in February 2022 to be in place by the March 1, 2022 deadline.

Some questions to ask:

1. Is teledentistry a good option for a patient? If yes, in what situations?
2. Can the standard of care be satisfied using teledentistry?
3. Can a dental practice develop the systems and controls for safely providing teledentistry and complying with regulatory requirements?

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**Teledentistry (cont.) --**

4. What will be the effect on dental practice profitability?

**Veterans' Benefits – New Texas Entities**

Under Senate Bill 938 passed by the Texas legislature in 2021, new Texas businesses that are 100% owned by honorably discharged veterans of the U.S. Armed Forces are eligible to receive filing fee and franchise tax breaks. This new Texas law for the filing fee breaks and franchise tax breaks applies to business entities formed beginning January 1, 2022 and ending December 31, 2025. The benefits of this law apply to business entities used by dentists for their dental practices, including professional limited liability companies, professional corporations, professional associations and limited liability limited partnerships. The filing fee break is a waiver of filing fees for formation and more. The filing fee break commences with formation filing fees and continues for up to five years, while the entity remains 100% veteran owned. This filing fee break will save eligible dentists, who have a professional entity formed for their practices, as well as dentists, who have a professional entity formed to be an independent contractor to work for other dental practices, a minimum of \$300 in filing fees and in some cases, more.

The Texas franchise tax is waived for eligible new Texas business entities, including dental, from the date of formation up to a maximum period of five years, i.e., with discontinuance of the waiver if the entity ceases to be 100% owned by honorably discharged veterans of the U.S. Armed Forces. During the period of waiver of the Texas franchise tax, there is a requirement to file tax reports with the State of Texas.

The benefits of this new law also extend to dentists and others, who have 100% veteran owned business entities for purposes other than the practice of dentistry. Examples include having an eligible business entity for ownership of the dental office building or condominium, side businesses, and side investments such as rent houses and other real estate. These regular business entities may include entities such as limited liability companies, for profit corporations and limited partnerships.

There is an application process to receive the benefits of this new law.

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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 sales/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)