

# DENTAL LEGAL UPDATE

## Wins for Dentists in the Texas Legislature:

Dental Insurance Reform; Local Anesthesia by Hygienists; Windfall Property Tax & Franchise Tax Changes, and More

by Jeanine Lehman, Attorney

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Dentists across Texas have raised concerns that state law governing dental insurance is inadequate and lacks clarity with respect to the recovery of overpayments; contains clauses that prohibit dentists from billing for services; and provides third party access to provider network contracts with dentists.

On June 18, 2023, new legislation was signed into law to address these concerns. Texas Legislature House Bill 1527 limits the circumstances for overpayment recovery and prohibits certain clauses in contracts with dentists. The new law also establishes clear requirements for third party access to provider network contracts to promote fairness and transparency. TDA, TAGD, and the Texas Academy of Pediatric Dentistry supported this new law.

The new law prohibits an employee benefit plan, health insurance policy provider, or issuer from recovering an overpayment made to a dentist unless (1) the dentist receives written notice of the overpayment including the basis and specific reasons for the recovery

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### Local Anesthesia by Hygienists

In 2023, the Texas Legislature passed House Bill 3824, which allows dental hygienists to administer local anesthesia in Texas. More work needs to be done before the new law is implemented.

Dental hygienists in Texas have long sought delegated authority for administration of local anesthesia. Every state (except Texas and Delaware), Washington D.C., and the military, allows this authority to be delegated by a dentist. HB 3824 seeks to implement this agreement between dentists and dental hygienists by allowing a dentist to delegate to a dental hygienist the authority to administer a local anesthetic agent by infiltration to a patient under certain circumstances. Among other provisions, the law requires the delegating dentist to be physically present in the

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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  
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 Secretary of State  
Voting Resource  
[VoteTexas.gov](http://VoteTexas.gov)

**TX Dental Insurance Reform (cont.) --**

request no later than 180 days after the dentist received the payment, and (2) the dentist fails to object in writing to the request for recovery of funds on or before the 45<sup>th</sup> day after the dentist receives the notice, or the dentist objects to the request in accordance with written policies and procedures and exhausts all rights of appeal. The employee benefit plan or health insurance policy provider is required to have written policies and procedures for objection by the dentist and the dentist must be allowed access to the claims information in dispute.

Further, a contract between an insurer and dentist may not include a provision or provisions that both:

- permits the insurer to disallow a service, resulting in denial of payment to the dentist for service that ordinarily would have been covered and
- prohibits the dentist from billing for and collecting the amount owed from the patient for that service if there is dental necessity for that service.

The prior law, which provides that the contract may not limit the fee the dentist may charge for a service that is not a covered service, continues in effect.

There are also significant protections added to protect dentists from third parties taking over the dentist's services under

provider network contracts. These include opportunities for dentists to opt-out of providing services to those third parties.

The new law applies only to an employee benefit plan for a plan year that commences on or after January 1, 2024, or a health insurance policy delivered, issued for delivery, or renewed on or after January 1, 2024, and any provider network contract entered into on or after September 1, 2023 in connection with one of those plans or policies. ■

**Property Tax Relief Windfall & Franchise Tax Changes on the Horizon**

Blessed with a major revenue surplus, the Texas legislature worked with the Governor to enact a landmark \$18 billion tax cut for property owners. These changes were hard fought in two special sessions of the legislature, due to differing views of how to allocate the tax relief. There was also franchise tax relief for small and medium-sized businesses in Senate Bill 3. Now it is up to Texas voters to vote in the November 7, 2023 election to amend the Texas Constitution and make this tax relief become the law.

The first change is an increase in the residence homestead exemption from \$40,000 to \$100,000. This will significantly reduce property taxes paid by homeowners. The second

change is to compress the school property tax rate, thereby lowering school district property (ISD) taxes. The third change is to have non-homesteaded real estate valued at \$5 million or less receive a 20% circuit-breaker on appraised value increases, as a 3-year pilot project ending on December 31, 2026. This change will help alleviate commercial property tax increases on some properties, including for dental practices which own or rent eligible real estate, as well as residential rental property taxes facing significant year-to-year increases in appraised tax values. These changes are in Senate Bill 2.

Senate Bill 2 author, Texas Senator Bettencourt, stated "This is an enormous deal for Texas homestead homeowners over a lifetime! Regular homeowner ISD tax bills will be cut by \$1,312.67 by year two. Multiply that by 30 years and that's a total of \$39,369.10 in property tax cuts. For over-65 and disabled homeowners by year two will receive \$1,482.67 multiplied by 15 years is a total of \$22,240.05 These are life-changing savings!" These calculations are for savings on a \$331,000 homestead, and a total school district taxing rate of \$1.1357.

The franchise tax legislation, starting on January 1, 2024, provides relief to small and medium-sized businesses, including dental practices. This legislation doubles the gross revenue threshold before businesses are required to pay franchise taxes from \$1.235 million to \$2.47 million in the tax year. The tax relief will result in 67,000 small to medium-sized businesses not being burdened by the franchise tax. Eligible dental practice entities will benefit from this tax relief in their regular operations and also when their practices are sold. Additionally, there will no longer be a requirement for a taxable entity to file a franchise tax report if the entity does not owe franchise taxes. Failure to file these "no tax due" reports has resulted in many Texas entities forfeiting their charters. Check with your accountant.

**Mark your calendars for the November 7, 2023 Texas constitutional amendment vote on Texas tax relief (Proposition 4 on the Ballot)!**

For info, go to [VoteTexas.gov](https://VoteTexas.gov)

## State Preemption of Local Regulations

The Texas Legislature passed the Texas Regulatory Consistency Act, House Bill 2127, to address concerns about city and counties in Texas overreaching by passing local regulations to pursue economic and social goals, resulting in a patchwork of regulations that apply inconsistently across Texas and that are in contradiction to the authority of the State of Texas.

This Act, which became law on September 1, 2023, preempts local regulation under at least eight of the Texas codes, including the Labor Code. The Act also empowers Texans to take legal action against a municipality, county, or official whose conflicting regulations adversely affected them with the possibility of recovering legal relief and associated legal costs.

The impact of local regulations on employment has been increasing. Think back a few years to the Austin City Council passing a Sick Leave Ordinance in a rush in the wee hours of the morning, largely ignoring business owner input. That ordinance has been put on hold by Court action, but would have had significant impact on Austin dental practices and other businesses. Austin still has a Ban the Box ordinance, which has strict requirements for criminal background checks and inquiries and imposes requirements and potential penalties on many Austin employers if they fail to comply. It is possible that the Ban the Box ordinance may be preempted by this new law.

Generally, the new law deems employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment as fields being regulated by the State of Texas, and not in the purview of the local governments.

This is an area to watch. Not surprisingly, there is already ongoing litigation challenging this new law. Opponents of this new law have dubbed it the "**Death Star**" bill. ■

**Jeanine Lehman** is a Round Rock, Texas dental attorney who practices dental, health, real estate, employment, and business law.

**Local Anesthesia by Hygienists (cont.) --**

facility and aware of the patient's status and well-being, requires the dental hygienist to complete specific training or have specific experience, and requires the Texas State Board of Dental Examiners to promulgate the rules regarding the delegation no later than January 1, 2024.

On September 13, 2023, I attended a Stakeholder Meeting of the Texas Dental Board concerning public input on consideration of a new Rule 115.10, "Administration of Local Infiltration Anesthesia". There was robust participation in the meeting. The meeting followed the August 10, 2023 Anesthesia Committee meeting, in which potential language on the new rule was discussed. Stakeholder input was requested on the following topics:

- How many hours of didactic and clinical instruction should the rule require?
- What examination requirements should the rule include?
- Should the rule require dental hygienists to renew their local infiltration anesthesia certificate?
- Should dental hygienists with local infiltration anesthesia certificates complete certain continuing education courses as part of their biennial license renewal?

- Should 22 TAC §108.6 (Report of Patient Death or Injury Requiring Hospitalization) require a dental hygienist to submit a report to the Board when a patient death or hospitalization may have occurred as a possible consequence of a patient receiving local infiltration anesthesia?

It is likely that a new rule will be proposed soon after the September stakeholder meeting. Then, public comments will be taken on that proposed rule. The next Anesthesia Committee meeting is scheduled for November 2, 2023. The next Board meeting is scheduled for November 3, 2023. It is likely that the new rule will be considered at that Board meeting. ■

**Noncompete Bill Failed**

The Texas legislation to dramatically restrict noncompete agreements for dentists, physicians, nurses and physician assistants failed to be adopted into 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 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 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)