

DENTAL LEGAL UPDATE

Texas Legislative Update

by Jeanine Lehman, Attorney

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Legislation impacting the dental profession has been PROPOSED in the current Texas legislature.

Managed Care Contracts: Senate Bill 554 introduced by Senator Carona proposes amending the Texas Insurance Code for managed care contracts with dentists. The bill provides that a contract between a dentist and an HMO or insurer may not limit the fee that the dentist may charge for a service for which a patient's health care plan, employee benefit plan or health insurance policy does not provide a benefit or reimbursement, including a service that exceeds the annual or lifetime maximum limits of the plan or policy or that is provided during a waiting period. If this bill becomes law, managed care contracts and payments should be reviewed for compliance with the bill.

Dental Support in Child Support Orders: Senate Bill 120 introduced by Senator Uresti proposes amending the Texas Family Code to provide for dental insurance or dental support to be provided by a parent for a child subject to a child support order.

Informed Consent X-ray/Hygiene: House Bill 796 introduced by

Business Law Workshops

Attorney Jeanine Lehman will be hosting two free workshops as a part of the RISE Global week in Austin.

Contracts 101: Business Contract Basics will be held on **Friday, March 11, 2011**, from 10 a.m. to 11:30 a.m. This session will provide basics on the steps of contract formation, including the offer and counter-offer process, requirements for a contract, common contract terms, and amendment of contracts. Coverage will include capacity, meeting of the minds, terms, consideration, written, oral and implied contracts, purposes, parties to the contract, pitfalls to avoid under the Statute of Frauds and other law, examples of industry specific contract requirements, and more. Q&A included. For more detail and to register see: <https://www.riseglobal.org/sessions/detail/contracts-101-business-contract-basics>

Corporations, LLC's, Partnerships, Sole Proprietorships, Professional Corporations, Professional Associations, and More: *Choosing the Foundation to Build Your Business* will be held on **Thursday, March 10, 2011**, from 2 p.m. to 3:30 p.m. This session will provide detailed analysis of the ownership choices available for business

Texas Budgetary Shortfall

- Major cuts in state programs and services – watch for cuts in Medicaid provider fees
- Potential new taxes and fees for revenues



Website Favorites

Texas State Board of Dental Examiners:
www.tsbde.state.tx.us

IRS: www.irs.gov

Texas Workforce Commission:
www.twc.state.tx.us

Texas Legislative Update (cont.)

Representative Zerwas proposes amending the Occupations Code concerning consent to cleaning without x-ray. In the proposed bill, if either the dentist or the dental hygienist believes a dental x-ray is necessary before a patient's teeth are cleaned, the patient's teeth may only be cleaned without first making the x-ray, if the dentist or dental hygienist obtains the patient's voluntary, written informed consent on a form prescribed by the Texas State Board of Dental Examiners.

Medical Assistance Program;

Sealants: House Bill 1248 introduced by Representative Villarreal proposes amending the Texas Human Resources Code to allow mobile dentistry services to provide permanent molar sealants at certain schools under the Medical Assistance Program if all requirements of the bill are satisfied.

Expect that Texas legislators will be very engrossed in addressing the state's major budgetary shortfall and redistricting. Those matters may divert attention from other legislation. To close the budget shortfall, major cuts in state programs will probably occur and also, new taxes and fees may occur. Professional fees to Medicaid providers may be cut. [See the June 2010 issue of the Dental Legal Update at www.jeanine.com for coverage of the legislative hearing on applying the Texas sales tax to certain dental services.] For updates on the progress of these proposed bills and others, go to www.capitol.state.tx.us or contact your legislator.

Business Law Workshops (cont.)

owners and the legal impact of those choices. Coverage will compare and contrast sole proprietorships, partnerships, corporations, limited liability companies, professional associations, professional corporations, professional limited liability companies, registered limited liability partnerships, and limited partnerships. Liability exposures and protections will be addressed, as well as business and practice growth opportunities and tiered structures to separate real estate ownership from operating company ownership. Coverage will include dental practice choices. Q&A included. For detail and to register see: <https://www.riseglobal.org/sessions/detail/corporations-llcs-partnerships-sole-proprietorships-professional-corps-prof>

Location for the workshops is:

Business Success Center
 Chase Bank Tower
 7600 Burnet Rd., Suite 110
 Austin, TX 78757
 (512) 933-1983

These workshops will be helpful to dentists, as well as dental office managers. Seating is limited. Registration is required through the RISE Global website at www.riseglobal.org. If a workshop is full, please contact Jeanine Lehman at (512) 918-3435 to schedule a future workshop.

Dental Board Update

Testimonials Ban

In 2001, the Texas State Board of Dental Examiners adopted Rule 108.59, which bans testimonials. Violation of the rule may result in a fine. This rule was discussed at the

11/19/2010 Texas Dental Board meeting. The Rule provides: "A licensed Texas dentist shall not write, disseminate or participate in testimonials in any manner as to such dentist's competency or ability or endorse proprietary remedies, drugs, instruments, equipment, appliances, food or food supplements, except to report the results of properly conducted and controlled experiments or clinical studies, provided that such reports are submitted only to recognized scientific journals or to recognized scientific professional associations, or both." Advertising and websites should be checked for compliance with this rule.

Expired DEA Permits

A DEA permit is required to write prescriptions for controlled substances. If the DEA permit is expired and controlled substances prescriptions are written, the dentist will be subject to disciplinary action by the Texas State Board of Dental Examiners per discussion at the 11/19/2010 Texas Dental Board meeting. The number of prescriptions written when the permit was expired will affect the penalty. Therefore, permits need to be timely renewed and a calendar system to flag upcoming expiration dates is helpful for dental practices.

Audit of Board Orders for Compliance

The Texas Dental Board audits Board orders for compliance. Failure to comply can result in additional sanctions.

False & Misleading Communications

On 12/17/2010, the Texas Dental Board adopted an amendment to Rule 108.52, relating to False or Misleading Communications.

The amendment is to clarify advertising restrictions. Dental Practice Act §259.005 provides a list of restrictions the Board may adopt to regulate advertising by licensees. Most permissible regulations found in this section have been explicitly integrated into the Board's rules in Chapter 108, Subchapter E, Business Promotion. The adopted amendment to §108.52 expands the list of

enumerated prohibitions to include: (1) failure to disclose in advertisements reasonably predictable fees (i.e., advertising a new patient exam and cleaning without including charges for radiographs); and (2) offering a discount for dental services without disclosing the total fee to which the discount will apply. Currently these two prohibitions fall under the general proscriptions of §108.52(2) which forbid a licensee from omitting necessary facts in communications. The amendment provides greater specificity in the rule.

Sedation and Anesthesia Permits

On 12/17/2010, the Texas Dental Board proposed new rules for sedation and anesthesia permits based on sedation guidelines adopted by the ADA. The proposed permitting process emphasizes the level of sedation of the patient rather than the route of administration of the medication. The proposed rules and commentary are published in the Texas Register at 35 TexReg 11155 located at www.sos.state.tx.us

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Past Issues of the Dental Legal Update are at www.jeanine.com Enjoy them and forward them to colleagues.

- ✓ **Your Dental Office Lease: Watch the Terms**
- ✓ **Ownership Options for Your Dental Practice**
- ✓ **Financing Your Dental Practice: Tips & Terms**
- ✓ **Buying a Dental Practice: Deal Points**

The information in this newsletter is not a substitute for legal advice. The information is general in nature and should not be relied upon as legal advice generally or that is applicable to any particular situation. For legal advice in a particular situation, the reader is advised to retain an attorney.

Federal Law Update; Drywall Problems

Dental Practice Sale/Succession Workshops

Legal aspects of dental practice sale and succession:

- ✓ Legal Checkup
- ✓ Partner/Associate Recruitment
- ✓ Disability/Retirement
- ✓ Practice Sale
- ✓ Buy Sell Contract
- ✓ Real Estate Options
- ✓ Estate Planning

For information, call Jeanine Lehman at (512) 918-3435.

To receive the **Dental Legal Update** by email, call (512) 918-3435.

Red Flag Rules

On 12/18/2010, the Red Flag Clarification Act of 2010 became federal law as Public Law 111-319. The original Red Flag rules of the Federal Trade Commission treated professionals, such as dentists, doctors, lawyers and accountants, like credit card companies and car dealerships. The rule imposed burdensome requirements for policies to protect against identity theft.

The 2010 Act modifies the Fair Credit Reporting Act to exclude from the coverage of the red flag rules, those persons who advance funds on behalf of a person for expenses incidental to a service provided by the creditor to that person. An example of this exclusion is a dentist who allows a patient to pay the bill after the time of service. This exclusion covers professionals who meet the exclusion, such as dentists, doctors, lawyers and accountants.

The FTC is currently in the process of revising its rules to comply with the new federal Act.

Drywall Problems

For dental practices that are finishing out leased office space or building a dental office building, it is prudent to check the source and composition of drywall in advance of construction, to avoid potential adverse health effects and corrosion of metal components including copper plumbing, exposed electrical wiring, and air conditioning units.

To date, the U.S. Consumer Public Safety Commission reports it has received about 3,794 reports from residents in 42 States, the District of Columbia, American Samoa, and Puerto Rico who believe their health symptoms or the corrosion of certain metal components in their homes are related to the presence of

drywall produced in China. Some of these reports came from Texas.

There is now concern that similar problems are arising with some American produced drywall. Lawsuits have been filed involving American produced drywall. News reports state that lawsuit pleadings indicate that the problem with American produced drywall may be connected to the use of synthetic gypsum, which is coal ash produced as a waste product of the scrubbing process to reduce sulfur dioxide emissions from coal fueled power plants. This waste product is known as FGD gypsum or flue gas desulfurized gypsum.

At least one lawsuit also points to the possibility that defective drywall may have been made with recycled drywall scrap – possibly from China.

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. Our health law practice is focused on business law, transactional aspects of individual and group practices, such as contracts and incorporations, office/facility leases, building purchases/condos, and build-to-suits, practice sales/purchases/buy-ins, 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