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Five Facts of Texas Dental Regulation

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Texas law and regulations give the government extensive regulatory authority in the dental arena. Texas Legislators need not increase the regulatory power of government, as some have suggested.

1	<p>Texas law is clear – only licensed dentists may practice dentistry.¹</p> <p>For well over a decade, the Texas State Board of Dental Examiners (TSBDE) has had authority to prevent dentists and dental groups from engaging in contracts that allow a person who is not a dentist to influence or interfere with a dentist’s professional judgment.</p>
2	<p>Texas law specifically permits Dental Support Organizations (DSOs).²</p> <p>The Texas Dental Practice Act expressly permits dentists to contract with DSOs for management services just as physicians can contract with management service organizations (MSOs) to provide non-clinical practice support. DSOs provide common administrative services such as supply procurement, accounting, and marketing; MSOs provide similar services to physicians. In both cases, the licensed dentist and physician is freed up from time-consuming administrative tasks and able to devote more time to the care of their patients.</p>
3	<p>TSBDE has extensive authority to ensure that dentists and dental group practices do not enter into arrangements that interfere, influence or control dentists’ independent professional judgment.³</p> <p>The TSBDE has existing authority to:</p> <ul style="list-style-type: none"> ➤ Require dentists to provide copies of all DSO contracts. ➤ Prohibit actions that constitute control or influence over dentists’ independent judgment. ➤ Work with the Attorney General to investigate and prosecute any unlicensed practice of dentistry. ➤ Impose penalties including: suspension, probation or termination of licenses; administrative penalties; cease and desist orders; subpoena power; and, through the Attorney General, injunctions and civil penalties.
4	<p>The Attorney General is specifically empowered to investigate and initiate legal proceedings against anyone who violates Texas law by interfering with dentists’ independent judgment.⁴</p> <p>It is a felony to practice dentistry without a license, including by influencing, controlling or interfering with a dentist’s professional judgment. The Attorney General is specifically empowered to initiate legal proceedings against violators of the Texas dental statutes and bring the full force of law down on anyone who would endanger patient safety by attempting to interfere with dentists’ clinical judgment or by practicing dentistry without a license.</p>
5	<p>Texas needs stronger enforcement – not more burdensome regulation.</p> <p>No amount of additional regulation will operate to remove bad actors from the marketplace without stronger enforcement of the laws already on the books. TSBDE already has extensive authority – rather than add to it via new legislation or regulations, what is needed is the full and active exercise by the TSBDE of its already extensive authority. Such a common-sense approach would result in the efficient regulation of Texas’ dental marketplace and the protection of Texas dental patients without the imposition of any unnecessary and costly regulations.</p>

Fact 1: Texas law is clear – only licensed dentists may practice dentistry

Related Statutes and Regulations

Tex. Occ. Code Ann. § 256.001 License Required

A person may not practice or offer to practice dentistry or dental surgery or represent that the person practices dentistry unless the person holds a license issued by the board.

22 Tex. Admin. Code Ann. §101.1 General Qualifications for Licensure

- (a) Any person desiring to practice dentistry in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by law . . .

Tex. Occ. Code Ann. § 251.003 Practice of Dentistry

- (a) For purposes of this subtitle, a person practices dentistry if the person: . . .
- (9) controls, influences, attempts to control or influence, or otherwise interferes with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder, or physical condition . . .

Tex. Occ. Code Ann. § 254.0011 Rules Relating to Control of Dental Practice

- (a) The board may adopt rules relating to the practice of dentistry as described by Section 251.003(a)(9) to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.
- (b) Rules adopted by the board under this subtitle may not preclude a dentist's right to contract with a management service organization. Rules affecting contracts for provision of management services apply the same to dentists contracting with management service organizations and to dentists otherwise contracting for management services.

22 Tex. Admin. Code § 108.70 Improper Influence on Professional Judgment

- ... Any dentist entering into any contract, partnership or other agreement or arrangement which allows any person other than a dentist any one or more of the following rights, powers or authorities shall be presumed to have violated the provisions of the Dental Practice Act, Section 251.003 regarding controlling, attempting to control, influencing, attempting to influence or otherwise interfering with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition:
- (1) Controlling, owning or setting any conditions for access to or the specific contents of dental records of patients of a dentist.
 - (2) Setting a maximum or other standardized time for the performance of specific dental procedures.
 - (3) Placing any limitations or requirements on treatments, referrals, or consultations except those based on the professional judgment of the dentist.
 - (4) Limiting or imposing requirements concerning the type or scope of dental treatment, procedures or services which may be recommended, prescribed, directed or performed, except that a dentist may limit the dentist's practice or the practice of a dentist employed by or contracting with the dentist to certain procedures or the treatment of certain dental diseases.
 - (5) Limiting or imposing requirements concerning the supplies, instruments or equipment deemed reasonably necessary by a dentist to provide diagnoses and treatment of the patients of the dentist.
 - (6) Limiting or imposing requirements for the professional training deemed necessary by the dentist to properly serve the patients of the dentist.
 - (7) Directing or influencing the selection of specific diagnostic examinations and treatment or practices regarding patients without due regard to the recommended diagnostic examinations and treatment agreed upon by the dentist and the patient, except that a dentist having the responsibility for training or supervising another dentist

may reasonably limit treatment or practices as a part of the training or supervision of a dentist based upon the training and competency of a dentist to perform certain treatment or practices.

- (8) Limiting or determining the duties of professional, clinical or other personnel employed to assist a dentist in the practice of dentistry.
- (9) Establishing professional standards, protocols or practice guidelines which in the professional judgment of the dentist providing dental service to the dentist's patient, conflict with generally accepted standards within the dental profession.
- (10) Entering into any agreement or arrangement for management services that:
 - (A) interferes with a dentist's exercise of his/her independent professional judgment;
 - (B) encourages improper overtreatment or undertreatment by dentists; or
 - (C) encourages impermissible referrals from unlicensed persons in consideration of a fee.
- (11) Placing limitations or conditions upon communications that are clinical in nature with the dentist's patients.
- (12) Precluding or restricting a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.
- (13) Scheduling patients of the dentist in a manner that may have the effect of discouraging new patients from coming into the dentist's practice, or postponing future appointments or that give scheduling preference to an individual, class or group.
- (14) Penalizing a dentist for reporting violations of a law regulating the practice of dentistry.
- (15) Conditioning the payment of fees to a dentist or the amount of management fees a dentist must pay, on the referral of patients to other health care providers specified by a non-dentist.

Fact 2: Texas law specifically permits Dental Support Organizations (DSOs)

Related Statutes and Regulations

Tex. Occ. Code Ann. § 254.0011 Rules Relating to Control of Dental Practice

- (a) The board may adopt rules relating to the practice of dentistry as described by Section 251.003(a)(9) to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.
- (b) Rules adopted by the board under this subtitle may not preclude a dentist's right to contract with a management service organization. Rules affecting contracts for provision of management services apply the same to dentists contracting with management service organizations and to dentists otherwise contracting for management services.

22 Tex. Admin. Code § 108.70 Improper Influence on Professional Judgment

- (c) The entry into one or more of the following agreements by a dentist shall not be presumed to have violated the Texas Dental Practice Act, Section 251.003.
 - (1) Leases, mortgages, ownership agreements or other arrangements regarding use of space for dental offices, based on a set, non percentage fee reasonably related to the fair market value of the office space provided at the time the lease or other arrangement is entered into.
 - (2) Agreements regarding the purchase, sale, financing or lease of dental equipment, instruments and supplies so long as the dentist maintains the complete care, custody, and control of the dental instruments and supplies and the lease does not provide for a payment or fee based upon a percentage of the revenue received by the dentist, or the dental practice.
 - (3) Agreements providing for accounting, bookkeeping, investment or similar financial services.
 - (4) The financing, lease, use or ownership of non-dentist business equipment such as telephones, computers, software, and general office equipment at reasonable, market related fees.
 - (5) Services regarding the pledge, collection or sale of accounts receivable from patients.
 - (6) Agreements regarding billing and collection services.
 - (7) Advertising and marketing services so long as the dentist remains solely responsible for the content of any advertising or marketing services and for ensuring that such conform to all applicable legal requirements.
 - (8) Agreements regarding consulting, professional development, business practices and other advisory agreements which do not limit the dentist's ability to use the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition.
 - (9) Employment agreements which specify that the dentist shall continue to have the right to use the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition, provided that in practice the dentist is allowed to use the dentist's professional judgment . . .

Fact 3: TSBDE has extensive authority to ensure that dentists and dental group practices do not enter into arrangements that interfere, influence or control dentists' independent professional judgment

Related Statutes and Regulations

Tex. Occ. Code Ann. § 254.001 General Rulemaking Authority

- (a) The board may adopt and enforce rules necessary to:
- (1) perform its duties; and
 - (2) ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety . . .

22 Tex. Admin. Code Ann. § 108.71 Providing Copies of Certain Contracts

Upon written request by the State board of Dental Examiners (Board), a dentist or dental organization that contracts with any entity that provides management services or pays all or part of any patient charges must, within fourteen (14) days of receipt of the request, provide copies as requested to the Board of any of the following:

- (1) all documents that constitute the contract, and all documents referenced by the contract, including all amendments and addenda;
- (2) billing statements sent to patients and third party payers;
- (3) information sent to patients concerning services rendered and concerning the right, if any, for the contracting entity to bill and collect fees for dental services; and
- (4) copies of documentation, if any, offered by or required of the contracting entity to potential investors in the entity.

22 Tex. Admin. Code § 108.70 Improper Influence on Professional Judgment

...
(b) Any dentist entering into any contract, partnership or other agreement or arrangement which allows any person other than a dentist any one or more of the following rights, powers or authorities shall be presumed to have violated the provisions of the Dental Practice Act, Section 251.003 regarding controlling, attempting to control, influencing, attempting to influence or otherwise interfering with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition: . . .

- (10) Entering into any agreement or arrangement for management services that:
 - (A) interferes with a dentist's exercise of his/her independent professional judgment . . .

Tex. Occ. Code Ann. § 254.009 Assistance of Prosecutor

- (a) The board shall aid in the enforcement of state law regulating the practice of dentistry.
- (b) A board member may present to a prosecuting officer a complaint relating to a violation of state law regulating the practice of dentistry.
- (c) The board and its members, officers, counsel, and agents may assist the prosecuting officer in the trial of a case involving an alleged violation of state law.

Tex. Occ. Code Ann. § 263.002 Grounds for Disciplinary Action in General

- (a) The board, after notice and hearing, may reprimand a person who holds a license issued under this subtitle, issue a warning letter to a person licensed under this subtitle, impose a fine on a person licensed under this subtitle, impose an administrative penalty under Subchapter A, Chapter 264, on a person who holds a license under this subtitle, place on probation with conditions a person whose license has been suspended, or revoke or suspend a person's license issued under this subtitle . . .

Tex. Occ. Code Ann. § 263.005 Probation

If a license suspension is probated, the board may require the license holder to:

- (1) report regularly to the board on matters that are the basis of the probation;

- (2) limit practice to the areas prescribed by the board; or
- (3) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis of the probation.

Tex. Occ. Code Ann. § 264.001 Imposition of Penalty

The board may impose an administrative penalty on a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Tex. Occ. Code Ann. § 264.051 Injunction

- (a) The state shall file suit for injunction against a person who practices or intends to practice dentistry in violation of state law. The suit shall be filed in the county in which the defendant practices or intends to practice dentistry.
- (b) The state is not required to demonstrate that any person was injured by the alleged prohibited practice.
- (c) If the defendant is found to have been unlawfully practicing dentistry or to be about to provide services in a manner that is the unlawful practice of dentistry, the court shall permanently enjoin the defendant from practicing dentistry in violation of law.

Tex. Occ. Code Ann. § 264.0525 Cease and Desist Order

- (a) The board may serve a proposed cease and desist order on a person the board believes is engaging or is likely to engage in an activity without a license or registration certificate required by this subtitle. The order must:
 - (1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;
 - (2) state the acts or practices alleged to be an unauthorized activity; and
 - (3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed.

Tex. Occ. Code Ann. § 264.0526 Emergency Cease and Desist Order

- (a) The board may issue an emergency cease and desist order to a person if the board reasonably believes that:
 - (1) the person is engaging or is likely to engage in an activity without a license or registration certificate required by this subtitle; and
 - (2) the unauthorized activity constitutes a clear, imminent, or continuing threat to a person's physical health or well-being . . .

Tex. Occ. Code Ann. § 263.008 Subpoena

- (a) The board may request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for examination and copying of books, accounts, records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or another state law relating to the practice of dentistry.
- (b) The board may request the attorney general to file suit against a person who fails to comply with a subpoena issued by the board to enforce the subpoena. The suit must be filed in a Travis County district court.
- (c) The court on finding that good cause exists for the issuance of the subpoena shall order the person to comply with the subpoena.

Tex. Occ. Code Ann. § 264.101 Civil Penalty

- (a) A person who violates a provision of this subtitle is liable to the state for a civil penalty in an amount not to exceed \$5,000.
- (b) Each day a violation continues or occurs is a separate violation for the purpose of imposing the civil penalty.

22 Tex. Admin. Code § 100.20 Final Board Decisions in Contested Cases

- (a) The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act.

- (b) The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations.

Tex. Occ. Code Ann. § 254.013 Peace Officer

- (a) The board may commission as a peace officer to enforce this subtitle an employee who has been certified as qualified to be a peace officer by the Commission on Law Enforcement Officer Standards and Education.
- (b) An employee commissioned as a peace officer under this subtitle has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle.

22 Tex. Admin. Code § 107.202 Disciplinary Guidelines and Administrative Penalty Schedule

- (b) Upon review of the completed investigation file, the Executive Director or a board subcommittee, of which, at least one member is a public member of the board, shall determine the amount of penalty imposed based on a standardized penalty schedule and based on the following criteria:
- (1) The seriousness of the violation, including but not limited to, the nature, circumstances, extent and the gravity of the prohibited acts and the hazard of potential hazard created to the health, safety, or welfare of the public;
 - (2) the economic damage to property or the environment caused by the violation;
 - (3) the history of previous violations;
 - (4) the amount necessary to deter future violations;
 - (5) efforts made to correct the violation; or
 - (6) any other matter the justice may require . . .

State Board of Dental Examiners Disciplinary Matrix

IMPERMISSIBLE DELEGATION

Licensee holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management.

Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(8)

First Tier Violation:

- Impermissible delegation resulting in no more than a minimal risk of patient harm. Isolated incident.

Sanction:

- Conditional dismissal including continuing education and/or restitution to patient.
- Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.

Second Tier Violation:

- Impermissible delegation resulting in actual patient harm, or presenting a risk of patient harm.
- Repeated incidents or pattern of impermissible delegation.

Sanction:

- Reprimand, or Probated Suspension with stipulations that may include: continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.

OTHER VIOLATIONS

License required to practice dentistry or dental hygiene

Dental Practice Act (DPA), Tex. Occ. Code §256.001

Sanction:

Issuance of Cease and Desist Order with referral of all information to local law enforcement.

Fact 4: The Attorney General is specifically empowered to investigate and initiate legal proceedings against anyone who violates Texas law by interfering with dentists' independent judgment

Related Statutes and Regulations

Tex. Occ. Code Ann. § 256.001 License Required

A person may not practice or offer to practice dentistry or dental surgery or represent that the person practices dentistry unless the person holds a license issued by the board.

Tex. Occ. Code Ann. § 264.151 Criminal Penalties

(a) A person commits an offense if the person violates Section 256.001. An offense under this subsection is a felony of the third degree. Each day of a violation is a separate offense . . .

Tex. Occ. Code Ann. § 264.008 Collection of Penalty

If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Tex. Occ. Code Ann. § 264.052 Representation of State

The attorney general or the district attorney or county attorney of the county in which the unlawful acts occurred shall represent the state in a suit under Section 264.051.

Tex. Occ. Code Ann. § 264.009 Determination by the Court

(a) If the court sustains the determination that a violation has occurred after the court reviews the board's order imposing an administrative penalty, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced penalty . . .