

BresnenAssociates

June 9, 2016

The Honorable Larry Gonzales, Chair
Texas Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78701

Re: Sunset Review of the Texas State Board of Dental Examiners

Dear Chairman Gonzales:

The Association of Dental Support Organizations ("ADSO"), which I represent, has previously commented in support of your staff regarding its discussion of the recent activities of the Texas State Board of Dental Examiners (the "Board") in Issue 1 of the Staff Report on the Board.

It has come to my attention that the Texas Society of Oral and Maxillofacial Surgeons (the Society) commented negatively on Issue 1, in which the Sunset staff stated: "The unusually large dental board inappropriately focuses on issues unrelated to its public safety mission."

I want to correct some inaccurate information in the Society's comments. The Society wrote:

"[T]he Board does not maintain data on which dental licensees are employed by non-dentist practice owners which could be readily available if they simply asked that question on license renewal applications and enter it in their electronic database. Therefore, as the Board receives complaints against dentists they are unable to review the number and type of complaints filed against the employee dentists nor are they able to look at claims, as a group, against non-dentist practice owners."

These statements are incorrect for a number of reasons:

- First, the Board *does* collect the data described by the Society. Pursuant to the passage of H.B. 3201, 83rd Legislature, Regular Session (2013), the Board initiated surveys of all dentist licensees in conjunction with their annual license renewal, including their associations with Dental Support Organizations (DSOs). The Society's members are licensed by the Board. So, the data the Society recommends that the Board *begin* collecting *has been* collected via the survey responses the Society's members presumably have been filing for years.

S.B. 519, 84th Legislature, Regular Session (2015), established a uniform definition of a DSO and clarified and eliminated ambiguities in the language of H.B. 3201. S.B. 519 also established a registration system for DSOs with the

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Texas Secretary of State and required data sharing between that agency and the Board.

In short, as the Staff Report stated, the evidence does not show that the DSO practice model is related to problems with patient care, even though the Board collects the data described by the Society.

For easy reference, please see Sections 254.019, Occupations Code, and Section 73.001, Business and Commerce Code, for the provisions of H.B. 3201 and S.B. 519, as codified.

- Second, the Society's comments refer to the "non-dentist ownership model of a dental practice" and dental licensees "employed by non-dentist practice owners." The Society appears unaware that Texas law does not provide for a non-dentist ownership model of a dental practice and a non-dentist cannot legally employ a licensed dentist to practice dentistry.

Dental practices do business through a Professional Corporation (PC) or Professional Association (PA). By definition, those professional entities may only be owned by the professionals (in this case, dentists) licensed to provide the service for which they were created. *See Chapter 301, Business Organizations Code.*

Under Title 3, Subtitle D, of the Occupations Code, only an individual may be licensed for the "practice of dentistry" and it is a felony to practice dentistry without a license. *See Sections 256.001, 256.002 and 264.151, Occupations Code.* Section 251.001(a)(4), Occupations Code, defines the "practice of dentistry" as "owning, maintaining, or operating an office or place of business in which the person *employs or engages under any type of contract* another person to practice dentistry." (Emphasis added)

The net effect of these provisions is that only a licensed dentist may employ or contract with another dentist to practice dentistry. The large majority of dentists have PCs or PAs for their practices' business structures, which entities must be wholly owned by licensed dentists. In turn, these entities contract for a variety of non-clinical services provided by vendors, including DSOs.

- Third, Section 254.0011, Occupations Code, protects the rights of dentists to contract with DSOs for non-clinical business services and authorizes the Board to adopt rules to ensure that such contracts do not allow a non-dentist to

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influence the independent professional judgment of a dentist. The Board has in place rules that delineate the clinical functions that *may not* be performed by a non-dentist under such contracts, as well as those non-clinical functions a non-dentist *may* perform to support a dentist's practice. Those rules are clear and specific and they have worked well for approximately 15 years. *See 22 T.A.C. Sec. 108.70.* There are serious statutory criminal and civil sanctions for violations of the Dental Practice Act and the administrative rules.

It's unfortunate that the Society's comments on Issue 1 of the Sunset Staff Report are incorrect and poorly informed in the multiple respects detailed above. Attacks on the DSO-supported practice business model chosen by many dentists have often proved to be accompanied by anti-competitive motivations. One can only hope that kind of motivation did not lead the Society to misinform the members of the Sunset Commission regarding the information and conclusions in the Staff Report.

Thanks for the opportunity to state the facts and the law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Bresnen". The signature is written in black ink on a white background.

Steve Bresnen
Attorney at Law

cc: Members, Texas Sunset Advisory Commission
Mr. Ken Levine, Executive Director, Texas Sunset Advisory Commission
Mr. Joe Walraven, Project Supervisor, Texas Sunset Advisory Commission
Ms. Julie Davis, Texas Sunset Advisory Commission