Important Notice

This is one of a series of ethical dilemmas published in the *Texas Dental Journal* between 1993 and 2005. The lead author of these dilemmas, Dr. Thomas K. Hasegawa, died tragically in 2005. The dilemmas remain an important legacy for dentistry.

Format

Each ethical dilemma was originally introduced in one issue of the *Texas Dental Journal* with the question, "What would you do?" The more expansive analysis of the dilemma was presented in a subsequent issue. The second page of this file depicts the cover of the issue containing the analysis of the dilemma, not the issue containing the briefer introduction to the dilemma. The ethical dilemmas were compiled for digital use by the American College of Dentists in 2008.

Purpose

This ethical dilemma and the other dilemmas in the series are only meant to further your knowledge and understanding of dental ethics by presenting, discussing, and analyzing hypothetical ethical dilemmas that may occur in dental settings. The dilemmas are not intended to: a) provide legal advice; b) provide advice or assistance in the diagnosis or treatment of dental diseases or conditions; or c) provide advice or assistance in the management of dental patients, practices, or personnel.

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American College of Dentists
839J Quince Orchard Boulevard
Gaithersburg, MD 20878-1614

301-977-3223
fax 301-977-3330
office@acd.org

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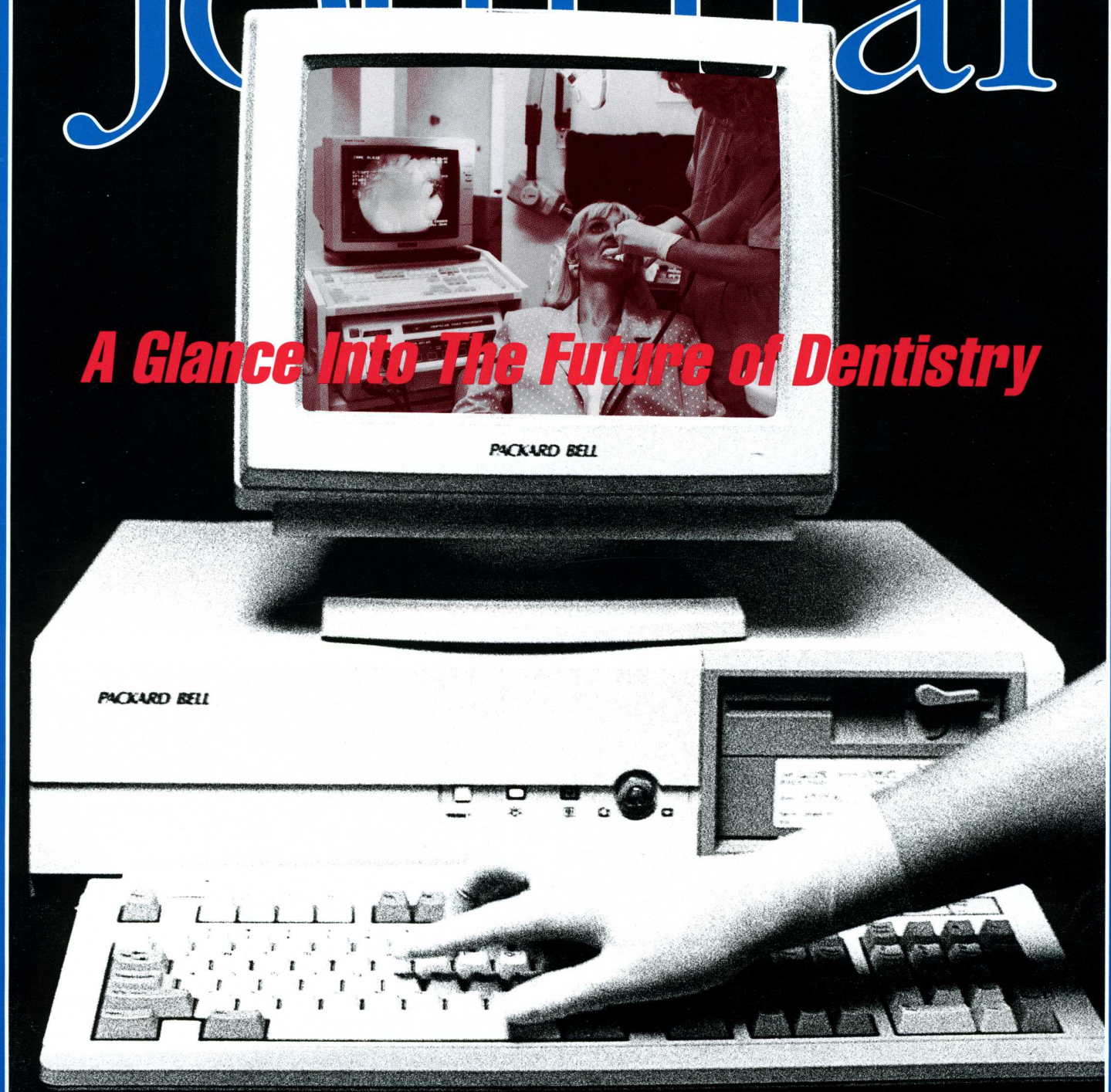

A Glance Into The Future of Dentistry

Behavioral Influences of Intraoral Video and Long-Term Wellness Planning

see page 3

or standard of care."

Is Mom "losing it"? None of the TDA dentists who responded to the survey believed that the son should make dental care decisions for your patient. The first ethical dilemma asked us to consider how decision making occurs within the dental operatory and how dentists, as other health professionals, deal with wanting to do their best for their patient while also respecting their patient's autonomous wishes, or considering the wishes of their family members.

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1. *Weinstein, B.* Dental Ethics. *Lea & Febiger, 1993. p. 62*

EDITOR'S COMMENT: Responses to the ethical dilemmas are views of the contributors and consultants and not Baylor College of Dentistry, the National Center for Policy Analysis or the Texas Dental Association. Address your comments to Dr. Thomas Hasegawa, Baylor College of Dentistry, 3302 Gaston Ave., Dallas, TX 75246.

What Would You Do?

Dilemma #2

Just over 3 years ago, Dr. Boley began practicing general dentistry in a community of 10 dentists. One of them, Dr. Leeds, has been in practice in the community for over 30 years and treats many of the older residents, who are very loyal to him as one of the "old-timers." During one of Dr. Leeds' infrequent absences, Ms. Wentworth, a longtime patient of Dr. Leeds, visited Dr. Boley for emergency treatment, which involved dental work recently completed by Dr. Leeds. Ms. Wentworth presented the sixth unsatisfactory case of Dr. Leeds' work that Dr. Boley had observed during the past two years. In Ms. Wentworth's case, an infected root tip had been left close to the sinus following an extraction and caused her considerable pain. After Dr. Boley recommended that the operation site be opened to remove the root tip, Ms. Wentworth questioned Dr. Boley about why Dr. Leeds had not removed the root tip at the time of the initial operation. She also asked about the quality of Dr. Leeds' care in general.

It had been apparent to Dr. Boley for some time that Dr. Leeds had not kept up with the latest advances in dentistry and that both his technical ability and his clinical judgment were slipping. Ms. Wentworth, for example, suffered from advanced periodontal disease and needed replacement of almost all restorations. Ms. Wentworth reported to Dr. Boley, however, that Dr. Leeds had recently told her that she required no additional dental care. (Case cited from Weinstein, B. *Dental Ethics.* Lea & Febiger, 1993; p. 102. All names in the case are fictitious.) What would you do if you were Dr. Boley?

1) Say or do nothing

2) Discuss the problem with a colleague or friend

3) Contact a member of the local peer review committee and discuss the case with him/her without mentioning the dentist

4) Report the dentist to the local peer review committee

5) Recommend that the patient review her case with a lawyer

6) Contact a member of the Texas State Board of Dental Examiners and discuss the case with him/her without mentioning the dentist

7) Recommend to the patient that she discuss the concerns with her previous dentist

8) Other alternative. (please explain)

SEND YOUR RESPONSE ATTENTION Dr. Thomas Hasegawa, Department of General Dentistry, Baylor College of Dentistry, 3302 Gaston Ave, Dallas, 75246 or fax (214) 828-8346.

EDITOR'S NOTE: Your positive response and encouraging comments to the first ethical dilemma are appreciated! The TDA membership expressed their views on the survey forms and in detailed letters. Due to publishing deadlines, it would be helpful if the response is received within two weeks of your receipt of the Journal so that your comments will be included. Joining in this column as a consultant is Merrill Matthews, Ph.D., a philosopher who is director of the Center for Health Policy Studies of the National Center for Policy Analysis (NCPA) and a lecturer of Philosophy and Ethics in the Department of Continuing Education at Southern Methodist University.

Thank you. Dr. Thomas Hasegawa

Dr. Boley's Dilemma

Response to Ethical Dilemma #2

In our second ethical dilemma, Dr. Boley is asked by Ms. Wentworth, an emergency patient, about the quality of care she has been receiving by her regular dentist, Dr. Leeds. Ms. Wentworth presented to Dr. Boley the sixth unsatisfactory case of Dr. Leeds' work he had observed during the past two years. How should Dr. Boley respond to Ms. Wentworth?

Dr. Boley's dilemma was no stranger to our readers as they related similar experiences and reflected on the perplexing nature of the problem. One reader "felt horrible" about the way he had handled a case, another felt "remiss for not dealing effectively" with another dentist, and a third wrote that reporting a colleague resulted in "hard feelings from this dentist's buddies." It was a "soul searching" experience for the readers. Dr. Boley's dilemma is one of the most difficult for dentists because they must weigh the dual responsibilities of preventing harm to patients while preserving their own personal and professional integrity. Is Dr. Leeds' work unsatisfactory? If so, what are Dr. Boley's ethical obligations to report continually faulty work and what actions are available to her?

LEVELS OF ADVERSE OUTCOMES

Dentists routinely assess the appropriateness and the quality of care provided by other dentists. When this assessment includes an adverse patient outcome, it is worthwhile to begin by defining issues of competency. The philosopher, Morreim[1], identified five levels of adverse outcomes in order to separate ordinary mishaps from real mistakes indicating incompetence.

The first level of adverse outcome is the accident, an event totally out of the control of the dentist as what may result from an equipment failure. At the second level the dentist makes a well-justified decision that turns out badly, as in the case of a patient requiring antibiotic coverage, who has no known allergies to antibiotics, but suffers an anaphylactic reaction. The third level occurs when there are disagreements about treatment options, a common problem for dentistry.[2] What are the options for the TMD patient, the patient with a malocclusion, or the patient who needs a three surface posterior restoration?[3] There is as much uncertainty in dentistry as in medicine. The adage "ask three dentists for their advice on a case and you'll get four opinions" applies. Simply because dentists disagree about treatment choices does not signify incompetence or mistreatment. The ADA Principles of Ethics recognizes this common occurrence when it states "a difference in opinion as to preferred treatment should not be communicated to the patient in a manner which would imply mistreatment."[4] At the fourth level, the dentist exercises poor, though not outrageously bad, judgment or skill. The general dentist may cement a full gold crown with a deep distal margin and determine that the margin is faulty at the next recall. The concern at this level is not the single error, but rather a pattern of errors as observed by Dr. Boley — a circumstance the ADA Principles of Ethics could describe as "continual" faulty treatment. At the fifth level are the outrageous violations such as the dentist who performs unnecessary treatment, performs surgery on the wrong site, or threatens the lives of patients[5] — situations the ADA Principles of Ethics could describe as "gross" faulty treatment by another dentist.

OBLIGATIONS TO REPORT

The obligation to report a colleague suspected as being incompetent may be derived from several origins. When people are faced with ethical dilemmas they naturally fall in two primary categories[6]; those who guide their decisions by their principles (principlists) and focus on what is right; and those who set their principles aside and guide their decisions by stressing the consequences of their actions (consequentialists). The consequentialist focuses on that which produces the most good. For the principlist, principles such as "do no harm", keeping promises, and the authority of codes of ethics may be the source of their obligation.

Physicians and dentists are instructed by the Hippocratic Oath to "above all or, at least, do no harm", or simply phrased, "if you can't help, at least don't harm." Dentists must routinely decide if a new product or technique is thoroughly researched, safe and effective, and when it is necessary to refer a patient who needs the skills of the specialist. Preventing the unnecessary harm of our patients is a key principle in health care ethics.

Keeping promises is another leading principle. The dentist enters the profession prepared to provide beneficial care and by staying contemporary in knowledge and proficiency, fulfills the promise to work in the patients' best interest. We don't expect this same treatment from a used car salesman where "buyer beware" may be the rule.

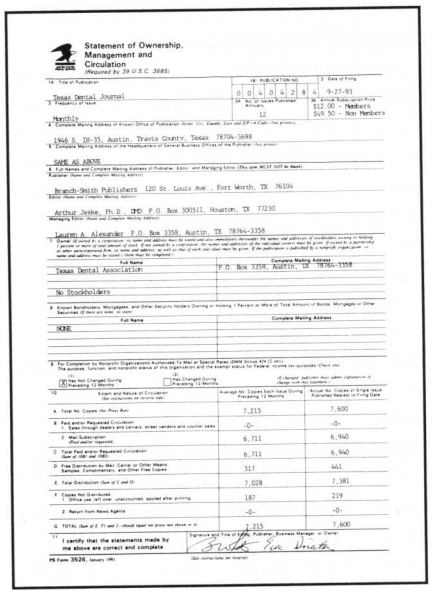
Official codes are another source of our obligations if we use their authority as our guide. The ADA Principles of Ethics[4] states: "Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or constituent society instances of gross or continual faulty treatment by other dentists." The TDA Principles of Ethics[7] goes further by stating: "Dentists should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed discipline. They should report dentists deficient in character or competence or who engage in fraud or deception."

For the consequentialist, the obligation to report depends on whether the individual is seeking the action that produces the greatest good for the greatest number or the greatest good

for the individual. Dr. Boley is faced with alternatives that have overwhelming consequences. Although it could be argued that the greatest good would be served by reporting incompetent practitioners, thus preventing harm to patients, it is the decision of the individual to determine what is good for whom.

ACTIONS FOR DR. BOLEY

The action for Dr. Boley begins with a thorough review of the accuracy and fairness of her assessment of Dr. Leeds' work. Were her concerns primarily a disagreement about therapy (level three), or a pattern of faulty treatment (level four)? We are not aware of the circumstances of the other five cases or if she is biased about his "old-timer" status. Emergency patients pose a special problem as our challenge is to manage the crisis — a situation that thwarts a thorough examination. Dr. Boley's obligation to her colleague is to be fair and unbiased and to prevent an unnecessary harmful action. Her obligation demands that she perform a careful, thorough, investigation.



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Lauren A. Alexander P.O. Box 3358, Austin, TX 78764-3358

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The action demands that she perform a careful, thorough, investigation.

If Dr. Boley is now certain of the facts and circumstances surrounding the six cases she may decide to discuss the case, without mentioning Dr. Leeds, with a trusted colleague, a member of the local peer review committee, or an Examiner with the Texas State Board of Dental Examiners. These were choices selected by our readers. If after her discussions she decides further action is necessary, several options are available.

One reader recommended that Dr. Boley discuss the situation directly with Dr. Leeds, a reasonable action considering that patients sometimes misunderstand our explanations. Dr. Leeds may have informed Ms. Wentworth of the difficulty of the extraction and the need for periodontal and restorative care. This discussion may decide the need for further action by Dr. Boley.

Reporting Dr. Leeds to the local peer review committee was another option that readers selected in this case although it was presented **in error**, as "the current peer review system is not intended to handle a complaint initiated by **one dentist against another**."[8] Peer review was established to manage dentist to patient, and dentist to third party disagreements and was established by the ADA in 1970. As one reader stated, Ms. Wentworth "urgently needs to know the truth about her dental problems — it is morally and ethically imperative" and that Dr. Boley can communicate this and not "disparage"[4] Dr. Leeds. In Texas, Dr. Boley could inform Ms. Wentworth that if she has a concern about the quality or appropriateness of her care she could call the local dental peer review committee. Peer review is available to both TDA members and nonmember dentists in Texas and in the calendar year 1991, Texas reported 534, or 13%, of the total of 4,030 peer review cases initiated nationally. Of the Texas cases, 60% were quality of care issues and 29% involved appropriateness of care issues.[9,10]

If Dr. Boley decides to file a complaint against Dr. Leeds she would contact the chairman of her local dental society committee on ethics and judicial affairs. If both dentists are members of the TDA the local committee would review the case. If one or both dentists are not members of the TDA the local committee would forward the complaint to the TDA's Council on Ethics and Judicial Affairs who would then forward the complaint to the Texas State Board of Dental Examiners for review.

There are several actions available to Dr. Boley and they are predicated on her careful and thorough investigation. None of the dentists responding to the case selected the option to say or do nothing, or to recommend that the patient review her case with a lawyer.

1. Morrheim, EH. Am I my brother's warden? Hastings Center Report, 23(3);19-27, May-June 1993.
2. Bader, JD & Shugars, DA. Agreement among dentists' recommendations for restorative treatment. J Dent Res 72(5):891-896, May 1993.
3. Sadowsky, D. Moral dilemmas of the multiple prescription in dentistry. J Am Coll Dent 46(4):245-248.
4. ADA Principles of Ethics and Code of Professional Conduct. May 1992.
5. McCarthy, FM. The Protopappas anesthesia deaths. JADA 110(1):26, Jan 1985.
6. Matthews, M. Ethical reasoning: making ethical decisions in the context of dentistry. Texas Dent J. 32-37, Sept. 1992.
7. Texas Dental Association Articles of Incorporation Constitution and Bylaws and Principles of Ethics and Code of Professional Conduct, p.18, Sept 1985.
8. ADA Peer review in focus. Dentistry's

dispute resolution program, p.3 & 9, 1993.
9. American Dental Association, Council on Dental Care Programs. National Peer Review Reporting System, 1992 Survey Results.
10. American Dental Association, Council on Dental Care Programs. 1992 National Peer Review Reporting Calendar Year 1991 Data (Texas)

CONCLUSION

Dr. Boley's ethical dilemma asks us to consider how we value our personal and professional responsibility to protect the health of the public and the integrity of our profession. A decision to report a colleague is one of the most agonizing dilemmas that dentists encounter and requires an extraordinary measure of wisdom, courage, and integrity. However, whether the dentist derives his or her decisions by principles or by consequences, since our duty first is to the patients' welfare rather than our colleague's career, evidence of manifest incompetence demands that we take steps to address it.

EDITOR'S COMMENT: Responses to the ethical dilemmas are views of the contributors and consultants and not Baylor College of Dentistry, the National Center for Policy Analysis or the Texas Dental Association. Address your comments to Dr. Thomas Hasegawa, Department of General Dentistry, Baylor College of Dentistry, P.O. Box 660677, Dallas, TX 75266-0677 or fax to (214) 828-8952.

What Would You Do?

Ethical Dilemma #3

Chad is a new patient in your general practice. He is fifteen years old, in good health, with only episodic dental care in the past even though his family has dental insurance. Chad presents with several small carious lesions, which is remarkable considering his high plaque index and (???) diet. During the summer, he rides with his father who drives a cookie truck and Chad admits to a heavy diet of cookies. Besides the small carious lesions, there is a large occlusal lesion on #19 and a 2mm periapical radiolucency at the apex of the mesial root. There is a history of a painful episode "months" ago, but Chad is asymptomatic. Your diagnosis after clinical and radiographic evaluation is pulpal necrosis with chronic apical periodontitis. The prognosis for nonsurgical root canal therapy is good because of an uncomplicated canal anatomy and excellent restorability. Chad also presents with a seriously compromised occlusion. He has a Class II malocclusion with moderate-to-severe anterior open bite. Chad only contacts his molars in maximum intercuspation, so maintaining these teeth is important to his current function and for future orthodontic care. Your treatment recommendations include a thorough preventive program, including diet analysis, orthodontic evaluation, root canal and restorative therapy.

Chad and his mother are in your office for the consultation appointment. Both parents work and his father was unable to come to the consultation. You present your findings and Chad's mother questions the necessity of root canal therapy, citing both the poor experiences of her friends and also the cost. You explain again the importance of this tooth, especially with Chad's compromised occlusal function, but she seems unable to make a decision as to whether to allow root canal therapy for Chad. At this point, she turns to Chad and asks "what do you want, a root canal or would you rather have the tooth pulled?" Chad replies "let's pull it mom." His mother agrees.

Now you are faced with an ethical dilemma. What do you think you should do? Check the course of action you would follow and forward this page as instructed below.

1. ____ You decide to follow the desires of Chad and his mother and extract the tooth.
2. ____ You decide to follow the desires of Chad and his mother and extract the tooth after having her sign an informed consent for treatment.
3. ____ You again emphasize the importance of maintaining his tooth because of his compromised occlusal function but she insists that the tooth be extracted. You explain to her that you will not treat Chad but will see him for emergency care until she can find another dentist.
4. ____ You recommend that decisions as complicated as this one should be made by both parents and that you will be available to discuss the therapy with his father. You agree to provide treatment if both parents agree to either the root canal or the extraction.
5. ____ You offer to his mother the option to seek a second opinion from an orthodontist. Chad is evaluated by the orthodontist who agrees with maintaining #19. His mother insists that the tooth be extracted and you agree to extract the tooth after having her sign an informed consent for this treatment.
6. ____ You offer to his mother the option to seek a second opinion from an orthodontist. Chad is evaluated by the orthodontist who agrees with maintaining #19. His mother insists that the tooth be extracted and you explain to her that you will not treat Chad but will see him for emergency care until she can find another dentist.
7. ____ Other alternative (please explain).

SEND YOUR RESPONSE ATTENTION Dr. Thomas Hasegawa, Department of General Dentistry, Baylor College of Dentistry, P.O. Box 660677, Dallas, TX 75266-0677 or fax to (214) 828-8952