

UNAPPROVED- DRAFT
BOARD OF DENTISTRY
MINUTES OF BOARD MEETING

Friday, April 9, 2004

Department of Health Professions
6603 West Broad Street, 5th Floor
Richmond, Virginia 23230-1712

- CALL TO ORDER:** A meeting of the Virginia Board of Dentistry was called to order at 9:12 a.m.
- PRESIDING:** Trudy Levitin, R.D.H., President
- MEMBERS PRESENT:** Meera Gokli, D.D.S.
Darryl Lefcoe, D.D.S.
Michael Link, D.D.S.
Harold Seigel, D.D.S.
Deborah Southall, R.D.H.
James Watkins, D.D.S.
Paul Zimmet, D.D.S.
- MEMBERS ABSENT:** Millard D. Stith, Jr.
Gary Taylor, D.D.S.
- STAFF PRESENT:** Sandra Reen, Executive Director
Elaine Yeatts, Senior Policy Analyst
Elizabeth Jolly, Assistant Director for Policy Education
Donna Shropshire, Contracts Manager
Cheri Emma-Leigh, Operations Manager
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** With eight members of the Board present, a quorum was established.
- PUBLIC COMMENT:** None
- APPROVAL OF MINUTES:** On a properly seconded motion by Dr. Link, the Board approved the Minutes of the Regular Board Meeting of January 22, 2004, as amended, and the Formal Hearing of March 5, 2004, as amended.
- PETITION FOR RULE-
MAKING:** **Stephanie D. Sawyer, Petitioner:** Ms. Sawyer petitioned the Board to amend Regulation 18 VAC 60-20-90 by deleting the statement that "A temporary license will not be renewed unless the permittee shows that extraordinary

circumstances prevented the permittee from taking the SRTA examination during the term of the temporary license.” After discussion, and on a properly seconded motion by Dr. Link, the Board voted 8-0 to deny this petition.

**LEGISLATION AND
REGULATION:**

Update on Regulatory Review – Public Comments: Ms. Reen stated that the Regulatory/Legislative Committee will meet on May 7, 2004 to review another draft version of the regulations. The Board will consider adoption of final regulations at its June 18, 2004 meeting. Ms. Reen gave out Dr. Burns’ proposal concerning 18 VAC 60-20-120 on intravenous sedation and advised these comments were considered by the Regulatory/Legislative Committee. Ms. Yeatts explained that because sections were added to the proposed regulations that were not in the first review, it may be necessary to have another comment period. Once final regulations are adopted, the Board will need to respond to comments. She also explained the process once the regulations are adopted by the Board.

AADE Chart on Anesthesia, Sedation and Analgesia:

The Board reviewed the AADE Chart on Anesthesia, Sedation and Analgesia. Ms. Reen pointed out that Virginia is on the conservative end of imposing requirements on licensees in comparison to other states.

Legislation/Emergency Regulations: Ms. Yeatts stated there are two bills which will require the Board to adopt emergency regulations. HB 1049 gives the Board authority to grant a temporary license to persons enrolled in advanced education programs. HB 577 grants all health regulatory boards the authority to delegate some informal fact-finding proceedings to an appropriately qualified agency subordinate. The regulations will set out the criteria for the appointment of an agency subordinate. This bill also allows health regulatory boards to order a physical or mental examination of a practitioner to determine if he is able to practice safely after a preliminary investigation by an informal fact-finding proceeding, and provides immunity for any person who reports questionable conduct or competency of a health care practitioner or provides

information pursuant to an investigation or who testify in a proceeding as a result of such report.

Continuing Education Proposed Amendment: The Board reviewed a memorandum dated February 16, 2004 regarding the Notice of Objection to the Fast-track Process for amending 18 VAC 60-20-10 et seq. Dr. Link stated that the Regulatory/Legislative Committee received more than the requisite number of ten objections concerning the Board's intent to limit the number of continuing education hours that could be obtained through home-study or on-line courses. On a properly seconded motion by Dr. Link, the Board voted 8-0 in favor of withdrawing the proposal.

Regulatory/Legislative Committee Draft on Proposed changes to Regulations: Dr. Link stated that the Committee made revisions to the draft on proposed regulations at its meeting on April 8, 2004. The President recommended that 18 VAC 60-20-106.3 be changed to (A) for general dentist, (B) for Oral and Maxillofacial Surgeons and add (C) to address teaching. Dr. Robert Strauss commented on 18 VAC 60-20-110 regarding the reference "Guidelines for Teaching the comprehensive Control of Anxiety and Pain in Dentistry." This matter will be referred to the Regulatory/Legislative Committee for review.

BOARD DISCUSSION:

Continuing Education Approval: Ms. Jolly spoke with the Board regarding a process the Board might use for approving continuing dental education programs. She presented a recommendation and attachments that the Board might adopt as a guidance document. On a properly seconded motion by Dr. Link, the Board voted 8-0 in favor of adopting the document with attachments, excluding the \$250 fee, for the interim until final regulations are approved.

RFP for Clinical Examination/Conflict of Interest: Ms. Shropshire reviewed the RFP process and Conflict of Interest standards as it pertains to obtaining a contract for clinical examinations. She estimated that a contract should be awarded by the second or third week of June. Ms. Reen explained that Ms. Shropshire has sent information to the Examination Committee and this information is strictly

confidential and not to be shared with anyone. Dr. Lefcoe, recommended, as chair of the Examination Committee, that the Board should make a final decision on awarding the RFP. After some discussion, and on a properly seconded motion by Dr. Zimmet, the Board agreed to have the Examination Committee's decision brought before the Board for a final decision. After further discussion, the motion was tabled and the Committee decided to enter into a closed meeting to discuss the matter with counsel.

Closed Meeting:

On a properly seconded motion by Dr. Seigel, the Board voted 8-0 in favor of the motion, to enter into a closed meeting pursuant to §2.2-3711(A)(7) of the Code of Virginia to consult with legal counsel.

Reconvened:

The Board reconvened in open session pursuant to §2.1-344.1(D) of the Code. On a properly seconded motion by Dr. Seigel, the Board voted 8-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

On a properly seconded motion by Dr. Zimmet, the Board voted 8-0 to have the Examination Committee's recommendation brought before the Board for a final decision.

**BOARD DISCUSSION
Continued:**

AADE Citizen of the Year Award: Ms. Levitin reviewed a letter from Mary Ann Burch, R.D.H. regarding nominations for the AADE "Citizen of the Year" award. Ms. Reen explained that the person selected is generally someone who has been active at the national level of AADE. There were no nominations made by the Board.

Article "Simpler Method for CPR Adopted": Dr. Seigel submitted this article for review by the Board as an informational document regarding CPR. Ms. Reen stated that in the regulatory process, language has been added to make it possible for a wider variety of providers to be accepted by using terminology like advance resuscitative

techniques or basic resuscitative techniques and using as examples, the Heart Association courses.

AADE Meeting: Ms. Levitin reported on the AADE Mid-Year meeting held in Chicago, Illinois.

Dr. Robert E. Blundell – E-mail to the Board addressing Licensure by Credentials: Dr. Blundell states he is a Diplomate of the American Board of Endodontists and is in favor of licensure by credentials. Dr. Link suggested that the Board create a Task Force on licensure by credentials for specialty license. Ms. Reen recommended instead that the issue of specialty licensure be placed in the Board's newsletter with a request for feedback. Terry Dickinson, D.D.S., stated that VDA's policy is to adopt specialty licensure and it will be part of their legislative package next year.

Dr. Paul Supan – Letter concerning the increasing misleading professional advertising in Virginia: The Board reviewed a letter from Paul Supan, D.D.S., M.P.H. regarding a law suit by the American Association of Orthodontists against Yellow Book US, Inc. Dr. Supan is concerned about general dentists using the term "certified" in a manner implying that they are Board Certified in their respective ADA recognized specialty, when in fact, they are "certified" by a private for profit corporate entity. The Board discussed drafting regulations that address using the word "certified," and on a properly seconded motion by Dr. Link, the Board voted 8-0 in favor of referring the matter to the Regulatory/Legislative Committee.

Rickey J. C. Reed – Letter concerning case #91871 false advertising: Ms. Reen discussed Mr. Reed's letter and concerns regarding a case, which was closed as no violation. Ms. Reen stated that when there is a clear violation, the Board members should state the violation and identify any mitigating issues.

**EXECUTIVE DIRECTOR'S
REPORT:**

On-Line Renewal and Surveys: Ms. Reen stated that 56% of all licensees renewed on-line and out of the 56% who renewed on-line, 80% filled out the survey. Ms. Reen

also stated that in the future, licensees will receive a letter with instructions on how to renew on-line and/or how to obtain a paper renewal form.

VIADC Summit and Oral Health Plan: Terry Dickinson, D.D.S., reviewed and discussed the Virginians for Improved Access to Dental Care Coalition (VIADC) and stated that there is currently approximately 35 organizations represented in this coalition. The Board reviewed the Oral Health Plan for Virginia, which is based on the 2003 Statewide Dental Summit. Ms. Reen stated that the Regulatory/Legislative Committee will look at these recommendations for action in 2005.

Posting Disciplinary Action: The Board reviewed the format for posting disciplinary action by three different Boards within the Department of Health Professions. On a properly seconded motion by Dr. Zimmet, the Board agreed to use the format as provided by the Board of Medicine. After further discussion, Dr. Zimmet amended his motion, which was properly seconded, and the Board voted 8-0 in favor of omitting the name of the licensee and only list the location by city under the heading of "Name and Action."

Scanning for Probable Cause Review: Ms. Reen stated that staff has met with Data regarding the scanning of documents on the web page. Staff is currently waiting on a written recommendation from data. Ms. Reen suggested that only one Special Conference Committee test the new computer system when it is up and running. Dr. Link volunteered Special Conference Committee "B" to test the system.

Update on Dental Assistants Information: Ms. Reen has begun the process of collecting data from several states, including Puerto Rico, in preparation for the planned legislative proposal for 2005.

OMS Licensees with Expired OMS Registrations: Ms. Reen reported that approximately nine OMS registrations expired December 31, 2003 and the licensees may be practicing oral and maxillofacial surgery with an expired

registration. The Board instructed Ms. Reen to prepare a letter notifying the licensees to renew within 30 days. Failure to renew will result in a PreHearing Consent Order with a Notice of Informal Conference to include a \$1,000 monetary penalty and require the licensee to renew their registration within 15 days.

Update on Whitening: Ms. Reen distributed information on tooth whitening and informed the Board that the FDA has not made a decision as to whether this will be regulated as a drug or as a cosmetic. The Board agreed to have Dr. Zimmet continue working with Ms. Reen on collecting data and to put an informational piece in the Board's bulletin.

Formal Hearing to be Scheduled: Ms. Reen reported that the Formal Hearing in the matter of Quincy Gilliam, D.D.S. is ready to be scheduled. The Board agreed to schedule the Formal Hearing for May 7, 2004.

ADJOURNMENT

With all business concluded, the Board adjourned at 3:40 p.m.

Trudy Levitin, R.D.H. President

Sandra K. Reen, Executive Director

Date

Date