

APPROVED

**BOARD OF DENTISTRY
MINUTES OF BOARD MEETING**

Friday, June 9, 2006

**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 9:13 a.m.
- PRESIDING:** Harold S. Seigel, D.D.S., President
- MEMBERS PRESENT:** Jacqueline G. Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Misty L. Sissom, R.D.H.
Edward P. Snyder, D.D.S.
Millard D. Stith, Jr.
James D. Watkins, D.D.S.
Glenn A. Young, D.D.S.
Paul N. Zimmet, D.D.S.
- MEMBERS ABSENT:** Meera A. Gokli, D.D.S.
- STAFF PRESENT:** Sandra K. Reen, Executive Director
Cheri Emma-Leigh, Operations Manager
Robert Nebiker, Director, Department of Health Professions
Elaine Yeatts, Senior Policy Analyst
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** With nine members of the Board present, a quorum was established.
- PUBLIC COMMENT:** Chris Richardson, D.D.S. stated he has been researching the requirements for administering nitrous oxide in other states, and found that out of 30 states, only Massachusetts requires more than one person. He further stated that the requirement to have a two person treatment team takes the dentist away from other responsibilities, and doesn't make any financial sense. He stressed that nitrous is a safe drug that does not require monitoring by someone other than the person treating the patient.
- Charles Gaskins, D.D.S. stated he wanted to back up what he just heard from Dr. Richardson. He stated that when administering nitrous oxide alone the public is protected and if it is used in

conjunction with another agent, then having someone extra to monitor may be necessary.

David White, D.D.S. stated he has used nitrous oxide since 1971, and has never had any problems. He asked the Board to follow the previous recommendations. Dr. White provided a partial list of states which shows that all except Massachusetts require only one person to administer nitrous oxide.

Melanie Bartlam, R.D.H., President of the Virginia Dental Hygienists' Association (VDHA), spoke on behalf of the VDHA to urge the Board to reject the recommendations from the Regulatory-Legislative Committee regarding the two levels of dental assistants. She stated that the Ad Hoc committee agreed by vote that a Dental Assistant II should be, at minimum, registered with the Board of Dentistry and that statutory language should limit delegable duties to those that are reversible. She asked that the Ad Hoc committee proposal be advanced and stated the VDHA would not support legislation that fails to define expanded duties and to protect the public.

John Bruno, D.D.S. asked if a situation where a periodontist or oral surgeon purchases and provides the restorative parts to a dentist for construction of a prostheses and the dentist then gives the parts to a dental laboratory to construct the prosthetic crown constitutes fee splitting. He indicated that the patient was being charged for the parts by both dentists. Mr. Casway advised that the Board does not have a regulation on fee splitting. Several members of the Board commented that the situation is not fee-splitting and is a routine practice then indicated that charging the patient twice for the parts would be fraud. Ms. Reen noted that Dr. Bruno's request for guidance was on the Board's agenda to be discussed later in the meeting.

Nancy Cox, R.D.H. stated that a Dental Assistant II should be registered with the Board and should be limited to reversible procedures to protect the public.

**APPROVAL OF
MINUTES:**

Dr. Seigel asked if everyone had a chance to review the minutes. Dr. Pirok moved to approve the Minutes of the Conference Call of February 28, 2006. The motion was seconded and passed. Dr. Zimmet moved to approve the Minutes of the Public Hearing of March 3, 2006. The motion was seconded and passed. Dr. Zimmet moved to approve the Minutes of the Board Meeting of March 3, 2006. The motion was seconded and passed.

**TESTING AGENCY
MEMBERSHIP:**

Dr. Seigel indicated that at the last meeting the Board decided to consider information about membership in testing agencies at this meeting and requested membership materials from ADEX, CRDTS, NERB, SRTA, CITA and WREB be included in the agenda package. He noted that many of the requested materials were in the package then introduced Dr. Cosby with ADEX and Dr. Looney and Dr. Narramore with SRTA who were present to assist the Board in its consideration.

American Board of Dental Examiners: John C. Cosby, Jr., D.M.D. gave a presentation on the American Board of Dental Examiners (ADEX) and its examination, ADLEX. He stated ADEX is a growing membership organization devoted to providing state of the art entry level exams for dental and dental hygiene candidates that are accepted nationally. He encouraged Virginia to join. He then provided an overview of the features of ADLEX addressing administration by CRDTS and NERB; the use of simulated and live patients; curriculum integrated format; its periodontal component; competency levels; criterion based scoring; critical errors; electronic data system; test fees; and, test validity. Dr. Cosby stated that should the Board decide to apply for membership, that ADEX will pay the Board member's expenses to attend their meetings. Dr. Cosby responded to questions about the cost of the exam and the need for examiners. Dr. Seigel thanked Dr. Cosby for his presentation.

SRTA: Wayne Looney, D.D.S. from Arkansas and David Narramore, D.D.S. from Kentucky made several remarks about removing the periodontal patient; interactive, computer generated testing; candidate assessment; and task analysis related to the exam given by the Southern Regional Testing Agency (SRTA) to clarify remarks made by Dr. Cosby. They also encouraged the Board to resume membership in SRTA. They then responded to questions from Board members and from VCU School of Dentistry faculty, Paul Wiley, D.D.S. and Betsy Hagan, D.D.S. Ms. Emma-Leigh distributed the SRTA membership information.

Dr. Hagan stated there is a lot not known about ADEX and advised that more information is needed before they could be prepared to host the ADLEX. Dr. Wiley commented on the School's long relationship and satisfaction with the SRTA and WREB exams. Dr. Hagan stated she liked the competition of

having more than one exam and indicated the School's willingness to address ADLEX should the Board request it.

WREB: Dr. Zimmet stated he will be going to the Western Regional Examining Board (WREB) in July and asked Board members if they have any questions they would like him to present to WREB.

NERB: A letter from Lillian H. Bachman, D.D.S. with the Northeast Regional Board (NERB) soliciting interest in appointments as Consultant Members was distributed.

CRDTS: Ms. Reen reported that she had requested the additional information referenced in CRDTS's letter but had not received it.

CITA: A letter from Delma H. Kinlaw, D.D.S. from the Council of Interstate Testing Agencies (CITA) announcing that Louisiana has joined CITA was distributed.

Dr. Seigel thanked everyone for the discussion and suggested deferring action. Dr. Young moved to rejoin SRTA. Following discussion, that motion was withdrawn to allow Mr. Casway to review the information received from SRTA.

Dr. Wiley urged the Board to consider joining a testing agency of their choice so that Virginia might have a voice in examination issues.

Dr. Seigel directed Mr. Casway to review all the information received from the testing agencies by the next Board meeting so the Board might decide on membership.

REPORTS:

Board of Health Professions: Dr. Seigel reported that the BHP examined the feasibility of making confidential, now, discipline on cases closed years ago for minor offenses. It was decided for a number of reasons that this action would equate to closing the barn door after the horses are gone. He then reported that the BHP is studying the issue of telehealth/telemedicine and has requested comments from the boards by August 1, 2006 to aid in the study. He also reported that the BHP doing a study on criminal background checks for licensure.

Executive Committee: Dr. Seigel stated that the Committee met

earlier today and discussed travel authorizations. He stated that any trip must be required for the operation of the Board and only one board member may travel out of state, with some exceptions such as there being concurrent sessions or where there are voting issues. Ms. Reen added that there is an expectation that a member or staff person should be limited to one out-of-state trip per year.

Free Clinics: Dr. Pirok reported that there are currently 50 free clinics in Virginia of which 31 had some type of dental assistance and six have a staff dentist on board. Jeannie Nelson, Executive Director of the Northern Neck Free Health Clinic, reported on the history of that clinic and stated that there are not enough dentists in her area to see patients. She distributed a brochure on the clinic and invited Board members to visit.

Regulatory-Legislative Committee: Dr. Snyder recognized the comments made during the public comment period on nitrous oxide and noted that a recommendation on the subject will be addressed later on the agenda. He also reported that the Committee had assistance from an Ad Hoc Committee on the recommendation regarding dental assistants that will also come up later in the agenda. He reviewed the language being proposed to recognize two types of dental assistants:

- (A) A Dental Assistant I is a person who is employed to assist a licensed dentist or dental hygienist by performing such duties as may be prescribed by regulations of the Board.
- (B) A Dental Assistant II is a person who holds a certification from an ADA recognized credentialing organization and has met such additional educational and training requirement as prescribed by regulations of the Board. A Dental Assistant II may perform such other intraoral procedures under the direction of a licensed dentist as may be prescribed by regulations of the Board.

Ms. Sissom asked for the definition of reversible and irreversible. Ms. Reen suggested that discussion of the language take place when the Committee's motion is considered. Dr. Seigel asked for a motion to accept the Committee report. Dr. Snyder made the motion which was seconded and passed.

Examination Committee: Dr. Young reported that the Committee had not met and noted that he and Dr. Gokli recently observed the SRTA exam given at the VCU School of Dentistry.

**ADMINISTRATIVE
PROCEEDINGS
DIVISION:**

Dr. Seigel noted that the Board is meeting with different support sections and that Lorraine McGehee, Deputy Director of the Administrative Proceedings Division (APD) was here to give a presentation on her section and to answer questions the Board might have. Ms. McGehee reviewed the staffing in her section and indicated that Cynthia Gaines, Leigh Kiczales and Sheon Rose were working with dentistry cases. She stated that in 2005, APD received 146 dentistry cases and so far for 2006, it has received 130 and expects to have received 204 cases by the end of the year. Ms. McGehee explained the importance of Board members completing the probable cause review sheet to explain the violation that will be the basis of a CCA, PHCO or Notice. She explained that none of her staff had dental training so it is important for Board members to clearly state the problem with the care provided so the allegations might be accurate. Following discussion, staff was asked to revise the review sheet to ask for the reasoning used to make a decision on the case. Mr. Casway advised that they should also be applying a law or regulation to the violation.

**LEGISLATION AND
REGULATION:**

NOIRA on Administration of Analgesia and Local Anesthesia by Dental Hygienists: Ms. Yeatts distributed a copy of HB 996, which allows dental hygienists to administer Schedule VI nitrous oxide analgesia and local anesthesia under a dentist's direction. Ms. Yeatts explained that effective July 1st the Board will have the authority to establish regulations on the training to be required so a hygienist is qualified to administer. She advised that the Board could begin the regulatory process by approving the proposed Notice Of Intended Regulatory Action (NOIRA). Dr. Watkins moved to issue the NOIRA. The motion was seconded and passed.

Petition to Allow Two Credits for Continuing Education for Volunteer Time in a Free Clinic: Ms. Yeatts reviewed the Petition for Rule-making submitted by Scott Golrich, to allow two credits for continuing education for those licensees who volunteer their time in a free clinic. Ms. Reen noted that in a prior discussion of this topic, it was agreed that the regulations would need to be amended because credit is currently limited to courses. Dr. Snyder reported that the recommendation of the Regulatory-Legislative Committee is to deny the Petition because continuing education credits should not be used to compensate someone for

volunteerism. The Committee motion passed.

Response to Petition to Allow Advertising Not Using Mercury in Fillings: Ms. Yeatts reviewed the Petition for Rule-making submitted by Linda Cifelli, to allow dentists to advertise that they do not use mercury in fillings. Dr. Snyder stated that a dentist can already advertise as requested in the petition so long as the advertising is truthful. The recommendation of the Regulatory-Legislative Committee is to deny the Petition. The Committee motion passed.

Fast Track Proposal on Inhalation Analgesia: Ms. Yeatts reviewed the draft fast-track proposal on inhalation analgesia (nitrous oxide). Dr. Watkins requested that the language be amended in 18 VAC 60-20-107.C(3) to make it clear that the dentist could also make adjustments. It was agreed to add “or by” for that purpose so #3 would read as follows: “If inhalation analgesia is used, monitoring shall include making the proper adjustments of nitrous oxide machines at the request of or by the dentist during administration of the sedation and observing the patient’s vital signs.” Dr. Watkins moved adoption of the proposal as amended. The motion was seconded and passed.

Legislative Proposals:

- The Practice of Dental Assistants – Ms. Yeatts presented the draft legislation recommended by the Regulatory-Legislative Committee. Dr. Snyder reported that the Committee concluded that there was no need to impose the costs of registration. Dr. Zimmet moved to take out the words “such other” under B, and to adopt the draft with the amendment. The motion was seconded and passed.
- Amend Authority to Take Disciplinary Action – Ms. Yeatts presented the draft legislation recommended by the Regulatory-Legislative Committee, which would remove the words, “Except in the case of a monetary penalty” from §54.1-2708. Mr. Casway explained that this provision was meaningless and could be repealed. Dr. Watkins moved that the proposed legislation be to repeal §54.1-2708 of the Code. The motion was seconded and passed.
- Amend Licensure by Credentials – Ms. Yeatts presented the draft legislation as recommended by the Regulatory-Legislative Committee, which repeals section C(iii) from §54.1-2709 to clarify the examination requirement for licensure by credentials.

Dr. Watkins moved to adopt the draft legislation. The motion was seconded and passed.

Ms. Yeats reviewed a list of the Board's Regulatory Actions currently taking place. In addition, Ms. Yeatts stated that the Public Hearing on fee increases will be held at 8:30 a.m. on July 21, 2006 and the comment period runs through August 25, 2006.

BOARD DISCUSSION: **Letter from Dr. Bruno on Fee Splitting:** Dr. Seigel noted that this item was discussed during public comment and that Dr. Bruno is concerned that certain practices between specialists and restorative dentists may constitute fee splitting. Mr. Casway stated that the Board has not adopted a regulation on fee-splitting and has no ethics regulations so there is no prohibition against fee-splitting. The consensus of the discussion was that the described practice described in the letter was not in violation of a dental practice law or regulation. Dr. Bruno thanked the Board for its consideration of his inquiry.

ASDA Letter on Initial clinical Licensure Process: Ms. Reen noted that the letter from the American Student Dental Association regarding clinical examinations required for licensure was presented for information purposes.

EXECUTIVE DIRECTOR'S REPORT: **Staffing Update:** Ms Reen reported that Kristy Evan's and LaFonda Parham's last day with the Board was June 2, 2006, and that she was able to borrow Ms. Parham from the Board of Medicine through June 9, 2006. She advised that until the state budget is approved she is unable to recruit for the planned classified position and that recruitment for the new executive position which will assume the Board of Long-Term Care Administrators is also delayed and staff time will continue to be shared between the two boards.

OMS Cosmetic Procedures Quality Assurance Review: Ms. Reen reported that the Board is in the process of conducting its first OMS Cosmetic Procedures Quality Assurance Reviews (QARs) which are required to be completed every three years. She reported six licensees were audited and that Dr. Turvey with the North Carolina State University School of Dentistry is reviewing the patient records. She advised that Dr. Seigel has designated SCC "C" to work with her on completing the QARs and to make recommendations to the Board about the actions to be

taken in response to the review findings.

Mr. Casway's Travel Request: Ms. Reen stated that Mr. Casway is requesting Board approval to attend the AADE Board Attorney Roundtable in Las Vegas on Oct. 14 and 15. Mr. Casway indicated that he was serving as the co-chair for the event and that he could earn CLE for attendance. Dr. Pirok moved to approve Mr. Casway's request. The motion was seconded and passed.

Board Travel: Ms. Reen advised that the travel request for five Board members to attend the AADE meeting in Las Vegas was returned because the request was not consistent with the rules for travel. She indicated that the request needs to be revised and resubmitted to limit attendance to one person or provide justification for more than one person to attend. After discussion, Dr. Watkins moved to request that two Board members attend the AADE mid-winter meetings, two dentists and one dental hygienist Board members attend the AADE annual meeting, and one Board member attend the Southern Conference of Deans and Dental Examiners meeting. The consensus of the discussion was that having two and three people in attendance at the two annual AADE meetings is justified because of members having individual voting privileges and because the meetings frequently include concurrent sessions relevant to the Board's operations. Dr. Watkins amended the motion to include that the President of the Board shall designate who will attend the meetings. The motion was seconded and passed.

**BOARD COUNSEL
REPORT:**

OAG Response to an Inquiry on Teeth Whitening: Mr. Casway reported that the Deputy Attorney General responded to an inquiry about teeth whitening systems that requires specialized equipment not available over the counter for home use constitutes "dentistry" or the "practice of dentistry" pursuant to §§ 54.1-2700 and 54.1-2711. The conclusion reached was that when and if whitening constitutes the practice of dentistry is a question of fact and is not an appropriate issue on which to render an opinion. Mr. Casway noted that this response is consistent with the Board's decision to consider complaints about whitening on a case by case basis.

Refresher on Conducting Informal Conferences: Mr. Casway indicated that the discussion with Ms. McGehee covered some of the important points to keep in mind. He suggested that at a future meeting, the Board do a mock probable cause review

exercise and then discuss the process and considerations for making case decisions. Dr. Seigel noted this would be valuable as a type of calibration and the consensus was to do this training. Ms. Reen stated she will identify two or three cases that were closed by confidential consent agreements, pre-hearing consent orders and/or informal conferences for the review.

Closed Meeting: Dr. Zimmet moved that the Board enter into a closed meeting pursuant to § 2.2-3711(a)(7) of the Code of Virginia for consultation with legal counsel pertaining to the Credentials Committee licensure recommendation and to actual or probable litigation. Additionally, it was moved that Board counsel, Howard Casway, and Board staff, Sandra Reen and Cheri Emma-Leigh attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene: Dr. Zimmet moved to certify that only public 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. The motion was seconded and passed.

Dr. Watkins moved to accept the decision made by the Credentials Committee. The motion was seconded and passed.

Ms. Reen stated that the Board meeting scheduled for Roanoke has been approved, but the room rate at the Hotel Roanoke exceeds the allowable rate. She said there are other hotels in close proximity that are within the state rate so reimbursement for lodging will be limited to the state rate. Further, she reported that Mr. Nebiker has requested that the next request to hold a meeting in conjunction with an association, be with the Dental Hygienists' Association.

ADJOURNMENT

With all business concluded, the Board meeting was adjourned at 4:49 p.m.

Harold S. Seigel, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date