

APPROVED

**BOARD OF DENTISTRY
MINUTES OF BOARD MEETING**

Friday, September 7, 2007

**Perimeter Center
9960 Mayland Drive, Suite 200
Richmond, Virginia 23233-1463
Board Room 4**

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- CALL TO ORDER:** A meeting of the Virginia Board of Dentistry was called to order at 9:10 a.m.
- PRESIDING:** Paul N. Zimmet, D.D.S., President
- MEMBERS PRESENT:** Meera A. Gokli, D.D.S.
Myra Howard
Jeffrey Levin, D.D.S.
Jacqueline G. Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Misty L. Sissom, R.D.H.
Edward P. Snyder, D.D.S.
James D. Watkins, D.D.S.
Glenn A. Young, D.D.S.
- STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board
Emily Wingfield, Chief Deputy Director for the Agency
Elaine Yeatts, Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Cheri Emma-Leigh, Operations Manager
Catherine Chappell, Administrative Staff Assistant
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** All ten members of the Board were present.
- PUBLIC COMMENT:** None
- APPROVAL OF MINUTES:** Dr. Zimmet asked if the Board members had reviewed the minutes from the June 8, 2007 board meeting, August 3, 2007 public hearing, and August 3, 2007 new member orientation. Dr. Watkins moved to accept the minutes of the June 8, 2007 board meeting as amended and the minutes of the August 3, 2007 public hearing as written. The motion was seconded and carried.

Ms. Sissom moved to accept the minutes of the August 3, 2007 new member orientation meeting as written. The motion was seconded and passed.

Reports:

Executive Committee Report. Dr. Zimmet advised that the executive committee had met on August 3, 2007 to address public comment received on the proposed legislation on expansion of duties to dental assistants. He advised that the public comment received was mixed and that the committee maintained the language on dental assistants I and II as adopted by the Board.

Credentials Committee. Ms. Sissom advised that the committee met on June 29, 2007 to discuss radiation safety program guidelines. She noted that it was decided that the existing guidelines need to be updated so the committee is planning to meet with interested parties to discuss requirements for minimal training.

Additionally, Ms. Sissom noted that the question was raised as to whether years of clinical practice with respect to application by credentials could include clinical practice in a foreign country. She requested that the issue be added to the board's agenda for further discussion.

Board of Health Professions. Dr. Gokli reported that no meeting was held in July due to the agency relocation. The next meeting was scheduled for September 25, 2007.

SRTA. Dr. Watkins presented his report of the July 18, 2007 SRTA conference call which was preliminary to the annual meeting held in August. He advised that he along with Dr. Young and Ms. Pace had attended the annual meeting in New Orleans. He noted the following SRTA initiatives:

- Computer system and website update
- Prompt grade reporting
- Posterior composite exam schedule for 2009
- Continued recruitment of executive director

He advised that the 2008 annual meeting would be held in Alabama at the Grand Marriott Hotel and Resort on August 8,9 and 10.

Ms. Pace noted the hand-out she provided on the SRTA Dental

Hygiene Committee meeting and Dr. Young reported that the Exam Committee meeting which were held during the annual meeting.

**LEGISLATION AND
REGULATION:**

Regulatory Actions Status Report. Ms. Yeatts presented a chart detailing current regulatory actions noting that:

- Amendment to the Public Participation Guidelines had been Fast Tracked and became effective as of August 25, 2007.
- Proposed legislation on the expansion of duties for dental assistants was at the NOIRA stage, having been published on July 25, 2005.
- The NOIRA on Informed Consent had been published on June 11, 2007, and the comment period closed on July 11, 2007.
- Proposed regulations on the requirements for administration of local anesthesia and/or nitrous oxide by hygienists were the subject of the day's public hearing and public comment would be accepted until October 5, 2007. Adoption of final regulations was anticipated for December 7, 2007.
- Regulations extending the time of general supervision from 7 months to 10 months were fast tracked and became effective August 25, 2007.
- Proposed regulations regarding delegation to an agency subordinate were also being fast tracked and were at the Governor's office awaiting approval.
- Regulation to eliminate the requirement to consider failure of examination in the past five years in order to conform with changes in the Code were finalized effective August 22, 2007.

Ms. Reen remarked that the Board had previously voted to initiate a regulatory review process. Ms. Yeatts advised that the issuance of a NOIRA in this regard was necessary and recommended that the regulatory/legislative committee identify areas of concern at its next meeting.

Guidance Document on Administration of Topical Oral Fluorides by Dental Hygienists. Ms. Yeatts presented revisions to the guidance document in response to concerns raised by the Virginia Department of Health. She noted the concerns were that the title was misleading and that paragraph 3 implied that practice was under direction only. She recommended that title be changed and that the 3rd paragraph be deleted from the guidance document as shown in the draft. Ms. Sissom moved that Guidance Document 60-12 be revised as presented. The motion

was seconded and carried.

Informed Consent. Ms. Yeatts presented correspondence received from the Virginia Dental Association stating that this regulatory action was not needed. She also presented regulation 18VAC85-20-28 from the Board of Medicine which addressed informed consent for the Board's reference along with informed consent language from other state boards. She advised that the Board must decide whether to move forward with the development of similar regulations or determine if the existing laws are sufficient to address the Board's concerns. Dr. Levin commented that recordkeeping requirements must be clearly stated for all dentists and that it was necessary to delineate informed consent requirements.

Dr. Levin moved to include informed consent as part of the recordkeeping requirements of regulation 18VAC60-20-15 and requested that the regulatory/legislative committee pursue the regulatory action. The motion was seconded and carried. Ms. Yeatts suggested that the regulatory/legislative committee plan to meet several times before the next Board meeting to address the regulatory actions underway.

Petition for Rule-Making. Ms. Yeatts referenced the Petition for Rule-making which requested that language in 18 VAC 60-20-220 be revised to clearly state that scaling and/or root planning might only be done by licensees. The petition had been sent to the registrar for comment and Board action was required at this time. Dr. Levin moved to replace the word "and" in 18VAC60-20-220A.1. with the words "and/or " and requested that the proposed change be fast tracked. The motion was seconded and carried.

RECESS

The Board recessed at 9:50 a.m. to allow for continuation of formal hearings.

RECONVENE:

The Board reconvened at 1:24 p.m.

**APPROVAL OF
ADDITIONAL MINUTES:**

Dr. Zimmet asked if the Board had had an opportunity to review the minutes of the August 17, 2007 formal hearing. Dr. Pirok moved to accept the minutes as written. The motion was seconded and carried.

**DHP DIRECTOR'S
REPORT:**

Ms. Wingfield thanked the Board for allowing her to update them on recent Agency activities on behalf of Ms. Ryals. She reported that the Agency relocation had been successful with minimal interruption in services. She advised that the conference center area was almost complete, with AV installation currently in progress. She also commented on:

- Steps being taken towards meeting the 250 day goal for closing cases
- Budgetary cuts initiated by the Governor which will limit travel and hiring to meet the goal of reducing the Agency's budget by 5%, and
- The Board's legislative request was advanced to the Secretary of Health and Human Resources.

Ms. Reen noted that the travel restraints will most likely affect future travel requests but that the planned trips for AADE, AADA, and Attorney Roundtable in San Francisco are still approved.

**BOARD
DISCUSSION/ACTION:**

AADE Call for Comments on Draft Guidelines. Dr. Zimmet presented draft guidelines from the AADE on Unprofessional Conduct Involving Sexual Boundary Violations for informational purposes.

Letter from CITA. Dr. Zimmet referenced the letter from CITA in the agenda packet. He suggested that the Board consider sending at least one member to observe the testing. Ms. Reen noted that the Board voted last year to send a member to observe the testing but that the available testing dates had been cancelled and that it was not possible to request additional days of travel for the San Francisco trip.

Dr. Zimmet asked if any one was willing to observe CITA testing. Dr. Gokli offered to participate at the Mississippi testing in January. Ms. Reen agreed to draft a response to Dr. Kinlaw stating that the Board could not send a representative to the meeting in California but was willing to send an observer to a testing site, if the Mississippi testing site was an appropriate one for Dr. Gokli to attend.

ADA CERP Call for Comments. Dr. Zimmet referenced the ADA CERP memorandum and that no response was needed.

ADHA Request for Comments. Dr. Zimmet referenced the

correspondence from the ADHA which was provided for informational purposes.

FTC Settlement with South Carolina Board of Dentistry. Mr. Casway referenced the recent FTC announcement of a settlement with the South Carolina Board of Dentistry relating to anti-competition actions. He noted that Virginia statutes provide for specific dental hygiene practices and that any charge of anti-competition would lead the Commonwealth to utilize the state action exemption.

Request for Signing Joint Letter about Smoking. Ms. Reen presented a request that she had received that the Board lend its name to an anti-smoking campaign. The Board agreed that the request was more appropriate for the CDHS, VDHA or VDA. Dr. Zimmet requested that Ms. Reen forward the request to those parties for their information.

Inquiry from Dr. Hahn about Hygienists Using Lasers. Ms. Reen referenced correspondence she had received questioning delegation of specific laser procedures to dental hygienists. Discussion ensued as to various laser products available. The Board agreed that Ms. Reen should respond that no laser procedure can be delegated to a dental hygienist based upon existing regulation 18VAC20-220(A)(1).

SRTA Membership. With respect to membership renewal, Dr. Zimmet asked Dr. Watkins and Dr. Young, as participants on the SRTA board and exam committee, for their views on renewal. Dr. Young commented that he was encouraged by the working relationships of the state representatives with the universities within the member states. He commented that the Board's continued participation in SRTA would allow for the Board's participation in discussion within the testing agency. Likewise, Dr. Watkins agreed that in light of continuing disagreements with respect to formation of a national exam, SRTA testing was working consistently.

Dr. Young moved that the Board rejoin SRTA for another year. The motion was seconded and carried.

SRTA Travel. Dr. Snyder requested that the Board ask for an exemption so that all interested members might attend SRTA

meetings and examinations. He explained that this should be possible because SRTA reimburses the State of Virginia for the expenses incurred by its members for travel related to SRTA business so that the member states do not incur the expense. Ms. Reen referenced the State Travel Regulations, noting that travel is to be business related regardless of the source of funds with the fewest possible travelers. She also noted that the three board members who act on behalf of the Board at SRTA activities did attend the annual meeting. She then advised that there was no provision for the type of exemption proposed and that a petition for rule-making to the Department of General Services would be the mechanism for requesting a change in the travel regulations.

SRTA Exam Schedule. Dr. Young distributed the SRTA exam schedule for the Board's reference and requested board member participation in the upcoming exams, either as examiners or as observers to become qualified as future examiners.

VDA Patient Record Article. Dr. Pirok referenced the recent VDA article and suggested using it as a guidance document on patient recordkeeping. Ms. Reen expressed reluctance in adopting another party's document, even though it was based on the Board's presentation. Ms. Sissom suggested requesting the legislative/regulatory committee to consider drafting guidance in this regard. Dr. Pirok offered his assistance as an ad hoc committee member.

Credentials Committee. Ms. Sissom requested direction on evaluating applicants who have practiced outside of the United States. Specifically, she inquired if such clinical practice could be used toward the 5 out of 6 years criteria for dentists and the 24 out of 48 months criteria for dental hygienists. Mr. Casway advised that the practice should be in another jurisdiction in the United States based on the requirement for current licensure in another state.

**BOARD COUNSEL
REPORT:**

Mr. Casway updated the Board on the following recent litigation activity:

- The appeal of J. Michael Coleman, DDS is scheduled to be heard in the Virginia Court of Appeals on September 19, 2007.
- The appeal of the revocation of William K. Lennon, DDS is

awaiting scheduling for oral argument in the Virginia Court of Appeals.

- The Fairfax Circuit Court affirmed the Board's August 11, 2006 Order in Farid Zurmati, DDS v. Virginia Board of Dentistry.

He also noted that decisions about whether to appeal formal hearing decisions were now pending for Dr. Hull and Dr. Biery.

**EXECUTIVE
DIRECTOR'S REPORT:**

Interpretation of Three Year Requirement for Maintaining Records. Ms. Reen advised that she had received a question from a licensee asking for an interpretation of when it is appropriate for a dentist to destroy patient records. The licensee inquired if records of an active patient could be destroyed if treatment was rendered more than three years ago. The Board responded that the rule for destroying records applied to three years for a nonactive patient, that is, a patient who has not sought treatment there in three years. Otherwise the dentist is obligated to maintain the records indefinitely for active patients.

The Board discussed extending the three year requirement to five years. Mr. Casway suggested obtaining information on time limits in other states and asking the regulatory/legislative committee to review the matter further.

With respect to maintaining records for an office that is closing, Mr. Casway noted that patients must be given the required notice and a specific time frame to obtain their records before records are destroyed.

Report on Case Activity. Mr. Heaberlin presented a memorandum on current case information. He anticipated providing this information at each future board meeting. He solicited requests for additional information or format changes to his report. Dr. Zimmet requested that information be provided on closed cases and advisory letters. He also requested that a chart detailing this information be provided to each Board member

Mr. Heaberlin reminded Board members to fill out their probable cause review sheets completely and to work within the parameters of the guidance document in determining fines.

Dr. Zimmet inquired as to the use of Agency subordinates. Ms. Reen advised that we had yet to use one. Mr. Heaberlin

commented that several cases had been delegated for subordinates. Ms. Reen added that the plan is to use wage employees as subordinates and that may be affected by the budget situation, however, because Ms. Southall is an approved agency subordinate and currently on staff, she could be used in this capacity. Ms. Reen commented that she would work with Ms. Ryals in meeting this need.

Budget. Ms. Reen referenced the Board's cash balance as of June 30, 2007, noting that it was consistent with budget projections and that a staff increase was requested for the coming year.

Travel. Ms. Wingfield noted that adherence to the rule of one traveler is being more stringently reviewed in light of the budgetary concerns.

ADEX Annual Report. Ms. Reen shared the ADEX Annual Report for information purposes.

Meeting with OMS's. Ms. Reen advised that a conference was being scheduled with licensees holding cosmetic procedure registration to address audit concerns. The meeting is scheduled for October 19 but in light of numerous calls and emails expressing unavailability that day, another day is under consideration.

Staffing. Ms. Reen advised that Ms. Loretta Rountree had joined the Board office staff as a part-time administrative assistant. Ms. Rountree works on disciplinary cases.

**CREDENTIALS
COMMITTEE
RECOMMENDATIONS:**

Closed Meeting. Dr. Snyder moved that the Board enter into a closed meeting pursuant to § 2.2-3711(a)(7) of the Code of Virginia for the purpose of discussion of applications for licensure. Additionally, it was moved that Board staff, Sandra Reen, Alan Heaberlin, and Catherine Chappell, and Board Counsel, Howard Casway, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene. Dr. Snyder 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. Levin moved to accept the Credentials Committee recommendations with respect to Case #114828. The motion was seconded and carried unanimously. Dr. Levin moved to accept the Credentials Committee recommendation as amended to impose a monetary fine of \$2,500 in Case #115480. The motion was seconded and passed.

**REPORT OF THE
NOMINATING
COMMITTEE/
ELECTION OF
OFFICERS:**

Dr. Watkins reported that the Nominating Committee had met and proposes the following slate of officers:

Paul Zimmet, DDS – President
Meera Gokli, DDS – Vice President
Edward Snyder, DDS – Secretary/Treasurer

Dr. Watkins moved that the Board accept the proposed slate of officers as presented. The motion was seconded and passed.

ADJOURNMENT

With all business concluded, the Board meeting was adjourned at 4:05 p.m.

Paul N. Zimmet, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date