

**APPROVED**

**BOARD OF DENTISTRY  
MINUTES OF BOARD MEETING**

**Friday, June 6, 2008**

**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 9:15 a.m.
- PRESIDING:** Paul N. Zimmet, D.D.S., President
- MEMBERS PRESENT:** Meera A. Gokli, D.D.S.  
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.  
Myra Howard
- STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board  
Sandra Whitley-Ryals, Director for the Agency  
Elaine Yeatts, Senior Policy Analyst  
Alan Heaberlin, Deputy Executive Director for the Board
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** All members of the Board were present.
- PUBLIC COMMENT:** **Gus C. Vlahos, D.D.S**, Virginia Dental Association President, expressed the VDA's desire to assist with dental assistant regulations along with the Virginia Dental Hygiene Association and the Virginia Dental Assistants Association. Dr. Vlahos also discussed his concerns with various unlicensed teeth-whitening businesses across the Commonwealth. He provided copies of Kentucky's laws and stated that his interpretation of the Virginia Code is that these businesses are practicing dentistry. He expressed concerned that safety, hygiene and OSHA requirements are not being met and requested that the Board take action.

**Dr. Terry Dickinson, D.D.S.**, Virginia Dental Association Executive Director, asked for clarification on the Board's \$350 office inspection fee. He asked if the fee is only for people who have committed a violation and are under a board order or if the fee must also be paid if the inspection is part of an initial investigation into a consumer complaint. Ms. Reen stated that it was her impression that when an inspector conducts an inspection a fee is generated, but that she would check on this and let him know.

**APPROVAL OF  
MINUTES:**

Dr. Zimmet asked if the Board members had reviewed the minutes in the agenda package.

- Dr. Snyder moved to accept the minutes of the March 6, 2008, formal hearings. The motion was seconded and carried.
- Dr. Gokli stated there should be an amendment to the March 7, 2008, board meeting minutes that stated, "There has been a significant number in the amount of pediatric dentists in Virginia." Dr. Gokli stated this sentence should further read, "Therefore, there would be an increase in the number of reactions." A motion was made by Dr. Snyder to accept the amendment, which was seconded and carried. Dr. Snyder moved to accept the minutes of the March 7, 2008 board meeting as amended. The motion was seconded and carried.
- Dr. Pirok moved to accept the minutes of the March 18, 2008, conference call board meeting. The motion was seconded and carried.
- Dr. Snyder moved to accept the minutes of the April 3, 2008, conference call board meeting. The motion was seconded and carried.
- Dr. Snyder moved to accept the minutes of the May 2, 2008, board meeting. The motion was seconded and carried.

**VCU SCHOOL OF  
DENTISTRY:**

**Ronald J. Hunt, D.D.S.**, Dean of the VCU School of Dentistry, gave a power point presentation on the School. Included in the presentation was:

- revisions being made to make the curriculum more closely related to a general dentistry practice by including more treatment planning and self-assessment.
- how the school was changing its methods of assessment to move away from the numerical requirements of a grade

and towards the demonstration of competency as assessed by the student and the faculty.

- an update on the new building for the dental school which is scheduled for completion in April of 2009.
- the school's plans for funding a satellite clinic in Wise County and the need for funding from the General Assembly to open the clinic.
- the school's efforts to recruit students from the southside and southwest areas of Virginia for the 2008 class.
- the strategic plan for 2008-2013 to improve the patient care programs, bolster research enterprises and enhance the curriculum of the D.D.S. and R.D.H. programs.
- information regarding faculty development, individual learning contracts and a master track continuing education program, as well as new courses being offered in the areas of conscious sedation for dentists and administration of local anesthesia by dental hygienists.

Dr. Hunt responded to board member questions, stating that the cost of the dental hygiene administration class is \$1,395; the size of the classes was increased to accommodate demand; individual learning contracts to fulfill Board orders are labor intensive and that the issues of where to get patients as well as insurance are difficult to overcome; he is in favor of having two national clinical exams; his concern that there is no regulation addressing graduates practicing as part of an examination; and, it was not practical to include a 5<sup>th</sup> year in dental school because there are not enough program resources.

**DHP DIRECTOR'S  
REPORT:**

Ms. Ryals reported on Virginia's A- ranking by the Pugh Commission Project Report as a top performing state. She then explained Governor Kaine's Business One Stop web-based service to assist new businesses. She went on to discuss the performance measures of the Virginia Department of Health Professions noting that overall customer satisfaction for licensure applications is 97% with a 93% rate for dentistry licensees; every board achieved 100% on the Agency's goal of processing 95% of all license applications within 30 days or less; and that the agency appears to be moving in the wrong direction for meeting its goal of resolving 90% of its patient complaints in 250 business days or less due to the huge backlog of cases that has to be addressed. Ms. Ryals complimented the Board for its work on clearing its

backlog and its achievement of a 211% clearance rate during the last quarter. Dr. Pirok complimented the agency for its improved investigations. Ms. Ryals then discussed the work Neil Kauder is doing to measure the agency's performance using tools he developed for courts to measure clearance rate, time to disposition, time dealing with active and inactive case load. Ms. Ryals concluded with a brief explanation of the Agency's efforts to improve document management by using imaging technology with License 2000.

**REPORTS:**

**Board of Health Professions.** Dr. Gokli discussed "Class Act of Virginia" a service for obtaining interpreters which will soon have a link on the website "211 Virginia." She noted that health providers should be providing interpreting resources to patients. She advised that the "211" phone number works similar to "411" in that consumers can call for information on contacting services in Virginia.

**SRTA.** Dr. Watkins reported that he attended the SRTA board meeting yesterday where the following matters were addressed:

- Cost of the DDS exam is increasing from \$1,600 to \$1,800.
- Cost of the RDH exam is increasing from \$825 to \$950.
- SRTA is now the most technologically advanced exam in that it is scoring with PDAs so that test results can be reported within 24 hours.
- SRTA employee manual is being updated.
- Nominating committee will nominate a new president elect.
- Next year's meeting will be in Biloxi Mississippi the first week of August.
- The search for an executive director is ongoing
- Will begin using a real tooth typodont to make the exam more realistic.
- SRTA's RDH exams are being used in non SRTA states.
- SRTA's budget is in the black.

**AADE Mid-winter Meeting.** Dr. Pirok reported that the first day of the meeting was devoted to discussing a 5<sup>th</sup> year of dental school. The outcome was agreement that more education is helpful to students but it was noted that students who seek post graduate training are the ones who don't necessarily need it and that students who need the training don't seek it out. Dr. Pirok further

stated that a mandatory 5<sup>th</sup> year of school was thought of favorably but the consensus was that implementation would be difficult. On Day 2 of the meeting, the discussion focused on the need to get ethical students to attend dental school rather to make dental students ethical. Dr. Levin added that the Examination Forum he attended addressed the content of the national board exam.

**LEGISLATION AND  
REGULATION:**

**NOIRA for Dental Assistant I and II Regulations.** Ms. Yeatts reviewed the Dental Assistant I and Dental Assistant II legislation that was recently enacted. She discussed the Notice of Regulatory Action (NOIRA) for "Registration and Practice of Expanded Practice of Dental Assistants" noting that issuing the notice begins the regulatory process. Dr. Snyder moved to adopt the NOIRA which was seconded and passed. Dr. Zimmet referred the regulatory action to the Regulatory/Legislative Committee noting that the committee will work with the state professional organizations and educational groups to draft the proposed regulations.

**BOARD  
DISCUSSION/ACTION:**

**CITA's Membership Invitation.** Dr. Zimmet noted the letter requesting that the Virginia Board join CITA. Dr. Zimmet stated he doesn't see a need to belong to more than one testing agency. Dr. Watkins opined that the Board should work towards a national exam and that perhaps CITA would be better served by encouraging them to join with another agency. Dr. Gokli said she is going to observe the CITA exam the week of June 9<sup>th</sup> and she will report back at the next meeting regarding her observations. It was agreed that the Board will respond to CITA's request after receiving Dr. Gokli's report.

**Examiner Requirements for Clinical Examinations.** The e-mail inquiry from Ms. Blancett asking if an examination team might be all hygienists was reviewed and discussed. Ms. Reen noted there were also related issues not clearly addressed in law such as a provision for dentists and dental hygienists not licensed in Virginia to examine here. Mr. Casway advised that each board member is authorized to carry out any of the Board's duties and that serving as an examiner does not constitute the practice of dentistry or dental hygiene. There was discussion of whether a dentist needs to be on site for dental hygiene exams since the

candidates are treating patients. Dr. Snyder commented and other members agreed that a dentist should be present at hygiene exams to oversee the treatment of patients. Mr. Casway indicated that this required some research and it was agreed that the SRTA candidate guide will be reviewed and these matters would be considered in regulatory review.

**Maryland's New Provisions for Dental Hygiene Practice.** Ms. Reen noted this information was brought to her attention as a result of interest expressed by the Governor's office so she provided it for information and discussion. Ms. Ryals stated that Governor Kaine has placed a priority on increasing the availability of health care for underserved populations in Virginia and she was interested in finding out if a similar program would be possible in Virginia. The Board discussed the issue of what can be done with public health and the underserved populations. Dr. Snyder mentioned that there was a new director of public health in Martinsville. He also expressed concern that non-mandatory health services are being shut down. Ms. Sissom opined that many view oral health as a luxury when it needs to be looked at as part of a person's overall health. Board counsel will research this issue and address it during the Board's September meeting.

**Supervision of Dental Hygienists.** Dr. Watkins asked about the Board's interpretation of the regulation "no dentist shall have more than two dental hygienists practicing under direction or general supervision at one and the same time." He asked how that provisions should be applied in a practice where there are four dentists practicing with 8 hygienists. Dr. Watkins further stated that it was his interpretation of the regulations that if a dentist is not assigned 2 hygienists and the dentist is seeing patients of all 8 hygienists then according to the regulations it is a violation. Dr. Young stated that this scenario is a likely occurrence and urged that the Board be practical in its interpretation. Ms. Sissom questioned whether the regulation served to protect the public and noted that there was no such regulation for dental assistants. Ms. Howard asked how this matter could be addressed. Dr. Zimmet assigned this issue to the Regulatory/Legislative Committee for consideration in regulatory review and added Ms. Howard as a member of the Committee.

**Teeth Whitening.** Dr. Zimmet asked for an update on what the Board was doing about teeth whitening by unlicensed people. Ms. Reen noted that complaints are being investigated by DHP but that the Board has no jurisdiction to address the actions of unlicensed providers. Reports where unlicensed practice is suspected are forwarded to local Commonwealth's Attorneys who do have jurisdiction. She also noted that DHP was discussing the management of cases involving unlicensed practice with the Office of the Attorney General. Ms. Ryals confirmed that preliminary discussions of this have been initiated. Mr. Casway reminded the Board that it previously decided it would decide whether services constituted unlicensed practice on a case by case basis. He also noted that this topic is being discussed in the network of board counsels and would be addressed at the Attorney's Roundtable during the AADE annual meeting. Dr. Zimmet asked that this issue be put on the September agenda.

**EXECUTIVE  
DIRECTOR'S  
REPORT/BUSINESS**

**Report on Case Activity.** Ms. Reen explained the division of the 250 days between Investigations, Probable Cause and Administrative Proceedings for case resolution noting that investigations are to be completed within 100 days, that the Board has 120 days total to complete its case actions and that APD has 30 days to produce resolution documents. She noted her appreciation of the work being done by Mr. Heaberlin and the Board member to move cases expeditiously and the resulting achievements.

Mr. Heaberlin reviewed reports on the case activity accomplished since January, noting that the number of open cases had been reduced from 642 in January to 340 in June. He also reviewed a chart giving 4 snapshots of the number of cases received, in open status and closed to highlight the progress the Board has made in addressing the backlog of cases.

**Staff Update.** Ms. Reen advised that recruitment of an administrative assistant for the deputy director is near completion and that advertising for a replacement for Ms. Emma-Leigh who is retiring has been approved. She reported that the Board has a new compliance case manager, Rose Dematteo, who is in her third week. She also noted that through the use of two temporary employees that the Board is now fully staffed.

**Board Authorization.** Ms. Reen explained that with Ms. Dematteo's arrival, the Board was directly managing respondents' compliance with the terms of Board orders. She asked if the Board would consider delegating certain authority to her to streamline some of the work on these cases. She then asked for a motion authorizing her to approve continuing education courses given by the VCU School of Dentistry since these courses have always been approved by the reviewing Board member. Ms. Pace moved that the executive director be authorized to approve courses given by the School. The motion was seconded and passed.

Ms. Reen also asked for a motion authorizing her to grant the first request for more time to complete the ordered terms when it is reasonable. Dr. Snyder asked what she considered reasonable and she indicated another month or two. Ms. Pace made the motion to authorize the executive director to address the first extension request. The motion was seconded and passed.

**Proposed Calendar.** Ms. Reen stated that it was time to adopt the 2009 calendar and asked if anyone had conflicts that needed to be addressed. Dr. Watkins asked if the reserve date in February could be changed from the 13<sup>th</sup> to the 27<sup>th</sup>. This change was agreed to by consensus.

In response to a question about SCC D not being included on the calendar, Ms. Reen explained that Mr. Heaberlin had reported to her that coordinating two committees to work simultaneously was not working out due to staffing so she is proposing that D be phased out for 2009 or perhaps sooner with new board appointments. She also explained that the committee had been established to help move cases through probable cause faster. Since then the Board decided to have one member review a case rather than all the members of a committee which in effect eliminates the need for the fourth committee. The Board agreed to transition out D and have three, 3 member committees as it had done in the past. Ms. Howard moved to accept the calendar as discussed. The motion was seconded and passed.

**Recognition of Ms. Emma-Leigh.** Dr. Zimmet asked Ms. Emma-

**BOARD COUNSEL  
REPORT**

Leigh to come forward. He thanked her for her service to the Board and wished her well in her move to Florida.

Mr. Casway reported on pending litigation, stating that

- the Petition for appeal made by Dr. Lennon to the Virginia Supreme Court was denied in March of 2008 and that Dr. Lennon had filed a petition for rehearing.
- the Doe Appeal was heard en banc by the Virginia Court of Appeals on April 29<sup>th</sup>. The issue the Court was most interested in was whether an administrative board and lay body may make determinations with respect to Constitutional challenges. A decision on this matter is pending.
- Dr. Farid Zurmatti has three cases pending. One is pending in the Court of Appeals on the board's order that was upheld by Fairfax County Circuit Court. The second is an injunction filed in Fairfax County Circuit Court to enjoin the publication of actions taken by the board on the department's website. This injunction has been briefed but no action has been taken. The third case was filed in Federal Court for injunctive relief and monetary damages listing current and former members of the Board as well as staff as defendants.
- James Wesley Taylor is seeking reversal of the Board's decision to deny him a license in an appeal to the Hampton Circuit Court.
- Haywood Pearson began but to date has not pursued an appeal of the Board's denial of his application for reinstatement.

**ADJOURNMENT**

With all business concluded, the Board meeting was adjourned at 1:12 p.m.

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

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Sandra K. Reen, Executive Director

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Date

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Date