Unapproved

VIRGINIA BOARD OF DENTISTRY
MINUTES
March 7, 2014

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:03 a.m. on March 7, 2014, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jeffrey Levin, D.D.S., President

BOARD MEMBERS PRESENT:

Surya P. Dhakar, D.D.S.
Charles E. Gaskins, III, D.D.S.
A. Rizkalla, D.D.S.
Evelyn M. Rolon, D.M.D.
Melanie C. Swain, R.D.H.
Tammy K. Swecker, R.D.H.
James D. Watkins, D.D.S.
Bruce S. Wyman, D.D.S.

BOARD MEMBERS ABSENT: Myra Howard, Citizen Member

STAFF PRESENT:

Sandra K. Reen, Executive Director for the Board
Elaine J. Yeatts, DHP Senior Policy Analyst
Kelley Palmatier, Deputy Executive Director for the Board
Huong Vu, Operations Manager for the Board

OTHERS PRESENT:

David E. Brown, D.C., DHP Director
Allyson Tysinger, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With nine members of the Board present, a quorum was established.

PUBLIC COMMENT: None.

APPROVAL OF MINUTES: Dr. Levin asked for approval of the minutes as listed on the agenda.

Ms. Swain asked that the December 5, 2013 minutes be amended to include the topics prioritized for action. Ms. Reen asked that these minutes be addressed at the June meeting. All agreed.

The Board's December 6, 2013, January 10, 2014 and January 24, 2014 minutes were approved as published and circulated.

DHP DIRECTOR'S REPORT:

Dr. Levin welcomed and introduced Dr. David E. Brown, DHP's new director. Dr. Brown said he looks forward to working with the Board and noted that he is a former member of the Board of Medicine.

LIAISON/COMMITTEE REPORTS:

Board of Health Professions (BHP). Dr. Levin said he did not attend the last meeting and will report at the next meeting.

AADB. Dr. Levin stated that he will attend the AADB Mid-Year meeting in April.

ADEX. Dr. Rolon highlighted changes made to the dental and dental hygiene exams for 2014.

Dr. Rizkalla stated that he will be representing the Board on the Dental Exam Committee at the ADEX Annual meeting in November, 2014.

SRTA. Dr. Watkins said the transition to the ADEX exam is going well and added that SRTA no longer has a separate Exam Committee.

Ms. Swecker reported that only minor changes were made in the dental hygiene exam. She added that the ADEX exam will be administered to dental hygienists beginning in 2015.

SCDDE. Dr. Levin stated that he and Ms. Reen presented at the annual meeting which was hosted by VCU this year.

LEGISLATION AND REGULATIONS:

Report of the 2014 General Assembly. Ms. Yeatts reported that:

- SB647 which directs DMAS to create and to report on a teledentistry pilot program to provide dental services to eligible school-age children has been continued to the 2015 session of the General Assembly.
- HB505 has a delayed effective date of January 1, 2015 to enforce penalties for distributing or selling Dextromethorphan (cough suppressant found in much over-the-counter medication) to a minor.

Status Report on Regulatory Actions. Ms. Yeatts reported the following:

- Sedation and Anesthesia permits for dentists - The emergency regulations expire on March 15, 2014. The final

regulations are still under review by the Secretary of Health and Human Resources. The Board will not be able to issue permits or enforce the regulations after March 15, 2014, until such time as the final regulations are effective.

- Periodic Review – The Board will consider adoption of proposed final regulations today.
- Correction of renewal deadline for faculty licenses –The amendment changing the renewal date to June 30 as required by statute became effective on February 12, 2014.

Adopt Proposed Final Regulations. Dr. Levin credited Ms. Reen for her efforts in reorganizing the regulations into four chapters then asked Ms. Yeatts to lead discussion.

Chapter 15 Regulations Governing the Disciplinary Process
Ms. Yeatts said no changes have been made to this chapter. Dr. Gaskins moved to adopt the proposed Chapter 15. The motion was seconded and passed.

Athermal Laser References. Ms. Yeatts reported that staff was unable to find a definition of the term "athermal laser" applicable to dentistry. She proposed defining the term "non-surgical laser" and amending sections 18VAC60-21-140(A)(1) and 18VAC60-25-40(C)(1) to use this term. Ms. Swecker so moved. The motion was seconded and passed.

Basic CPR vs. Basic CPR for Health Care Professionals. Ms. Yeatts stated that staff obtained information on the courses offered by three continuing education providers for review and a decision on whether to amend sections 18VAC60-21-250(A)(2) and 18VAC60-25-190(A)(1). Dr. Rizkalla moved to use the phrase "CPR for Health Care Professionals." The motion was seconded and passed.

Ms. Swecker asked if training in the use of epinephrine auto-injectors and asthma inhalers should be added. Dr. Levin suggested addressing this in a future regulatory action. All agreed.

Chapter 21 Regulations Governing the Practice of Dentistry
Ms. Yeatts said the adopted Sedation/Anesthesia regulations are included in this chapter then led the review.

18VAC60-21-80.D – It was suggested that the word "*broadcast*" from the heading be deleted. All agreed.

18VAC60-21-110 – Ms. Swecker asked if free clinics include nursing homes and assisting living facilities. Ms. Yeatts said that the term "free clinics" is defined in the Code. Ms. Swecker asked that

treatment in nursing homes and assisted living facilities be added. Ms. Yeatts said this would be a major change requiring another public comment period on this regulatory package and suggested addressing this in a future regulatory action. All agreed.

18VAC60-21-140 – the term "*athermal lasers*" was changed to "*non-surgical laser.*"

18VAC60-21-250.C(15) – the "*Council of Interstate Testing Agencies (CITA)*" was added.

Dr. Watkins moved to adopt Chapter 21 as amended. The motion was seconded and passed.

Chapter 25 Regulations Governing the Practice of Dental Hygiene.

18VAC60-25-40.C(1) – the term "*athermal lasers*" was changed to "*non-surgical laser.*"

18VAC60-25-190.C(15) – the "*Council of Interstate Testing Agencies (CITA)*" was added.

Dr. Gaskins moved to adopt Chapter 25 as amended. The motion was seconded and passed.

Chapter 30 Regulations Governing the Practice of Dental Assistants

Dr. Rizkalla moved to adopt Chapter 30 as presented. The motion was seconded and passed.

Ms. Tysinger asked the Board to consider 18VAC 60-21-80.G(1) on publishing an advertisement. She asked about amending this section to change the language from "causes" to "would cause" an ordinarily prudent person to misunderstand or be deceived. Ms. Yeatts noted that "causes" is not new language and Ms. Reen said it was adopted some time ago based on the advice of Board Counsel. Ms. Tysinger said she would research this.

Dr. Wyman asked about notifying licensees of the changes when these chapters are effective. Ms. Reen said licensees are responsible for and attest to keeping current with the laws and regulations. She added that work on this regulatory package has been addressed in BRIEFS which is sent out every six months via e-mail.

Dr. Wyman moved to notify licensees by e-mail when the new regulations go into effect so they know to read them. The motion was seconded and passed.

Ms. Reen suggested sending the notice when the regulations are scheduled for publication. All agreed.

Ms. Swecker asked for reconsideration of 18 VAC 60-20-110 to address vulnerable populations unable to travel to a dental office. No action was taken.

BOARD DISCUSSION/ACTION: **Review of Public Comment Topics.**

Letter from Dr. Sherwin – Dr. Sherwin's request for a more receptive atmosphere during the Board's public comment period was reviewed and accepted as information.

Letter from Dr. Bennett – Dr. Bennett's request for the Board to work with the VDA and the VCU School of Dentistry to promote professional behavior was reviewed and accepted as information.

Guideline for Conscious/Moderate Sedation – Dr. Levin said he developed this draft to address implementation of the regulations on sedation. Ms. Tysinger said a legal review is needed and suggested deferring discussion to the June meeting. All agreed.

Review of Parliamentary Use – Dr. Gaskins commented that the Board might benefit from following some basic parliamentary procedures. He then addressed several procedures for the conduct of meetings and management of motions.

Review of Freedom of Information Act – Dr. Gaskins stated that Board members need to be aware of the requirements of this law then reviewed sections addressing meetings and minutes.

ADA CERP 2013 Annual Report – Dr. Levin stated that this was provided as information only.

REPORT ON CASE ACTIVITY: Ms. Palmatier reported on the Board's disciplinary case statistics, noting that the Board received 407 cases and closed 409 cases in 2013. She added that the Board received a total of 63 and closed total of 80 cases for a 127% clearance rate in the second quarter of FY2014 and noted that two dentists were suspended in the last three months.

Ms. Palmatier stated that the Credentials Committee and staff are requesting guidance on an argument made by an applicant for licensure by credentials that he only needs to show he completed dental training at a university or college accredited by CODA rather than show that he completed a CODA accredited program.

She said 18VAC60-20-71(2) on licensure by credentials requires an applicant to "*Be a graduate of a dental program, school or college, or dental department of a university or college currently accredited by the Commission on Dental Accreditation of the American Dental Association.*" In contrast, 18VAC60-20-60 on educational requirements requires an applicant to "*...be a graduate and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental education program in any other specialty.*"

She asked the Board for its interpretation of 18VAC60-20-70(2). Ms. Reen noted that the dental application instructions are provided for review.

After discussion, the Board agreed that the intent of the two regulations is the same; that an applicant must have completed a CODA accredited program, as stated in the application instructions and as addressed in the proposed Chapter 21.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

Board Counsel – Ms. Reen reported James Rutkowski will begin serving as Board Counsel on Monday, March 10, 2014. She added that he worked in the Administrative Proceedings Division before moving to the Office of the Attorney General.

Board BRIEFS – In response to concerns reported by Board members, Ms. Reen explained that the format for BRIEFS was established to facilitate a regular flow of information from the Board to its licensees. She said the format is to highlight the work of the Board and provide links to additional information. She added it is not possible to address every subject discussed and accomplish a regular flow of information. She added that the Board could consider a different format.

December 5, 2013 business meeting minutes – Ms. Reen stated that she talked with Ms. Swain about her request to amend these minutes to address the prioritization of issues adopted. She said

the prioritization of issues was addressed by the Regulatory-Legislative Committee which also met on December 5, 2013. She added that the Committee minutes do include this discussion and that the Board's meeting minutes will be included in the June agenda package for adoption without any changes.

Public Comment Script – Ms. Reen proposed that she develop a script to be read prior to the public comment period so that the public will understand the that the Board cannot engage in a discussion. Ms. Tysinger said she would provide examples of scripts. All agreed.

Discussion of Public Comment – Ms. Reen explained that the only opportunity the Board has to address the issues and concerns raised in public comment is to discuss it when it comes up on the agenda.

CASE RECOMMENDATIONS:

Dr. Levin asked a dental applicant to address his application before the Board entered into closed session. After hearing from the applicant, Dr. Levin explained the Board would report its decision on the applicant's case immediately following the closed session.

Case # 153117:

Closed Meeting: Ms. Swain moved that the Board enter into a closed meeting pursuant to §2.2-3711(A)(27) and Section 2.2-3712(F) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of case #153117. Additionally, it was moved that Board staff, Ms. Reen, and Ms. Palmatier attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and passed.

Reconvene: Ms. Swain 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.

The Board reconvened in open session pursuant to §2.2-3712(D) of the Code.

DECISION: Dr. Wyman moved to adopt the recommended decision of the Credentials Committee. The motion was seconded and passed.

Case # 152164, 153268 154322:

Closed Meeting: Ms. Swain moved that the Board enter into a closed meeting pursuant to §2.2-3711(A)(27) and Section 2.2-3712(F) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of cases #152164, 153268 and 154322. Additionally, it was moved that Board staff, Ms. Reen, and Ms. Palmatier attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and passed.

Reconvene: Ms. Swain 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.

The Board reconvened in open session pursuant to § 2.2-3712(D) of the Code.

DECISION: Dr. Watkins moved to adopt the recommended decisions of the Credentials Committee. The motion was seconded and passed.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 12:15 p.m.

Jeffrey Levin, D.D.S., President	Sandra K. Reen, Executive Director
Date	Date