

**VIRGINIA BOARD OF DENTISTRY  
MINUTES  
September 12, 2014**

**TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:02 a.m. on September 12, 2014, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, Virginia 23233.

**PRESIDING:** Melanie C. Swain, R.D.H., President

**BOARD MEMBERS  
PRESENT:**

John M. Alexander, D.D.S.  
Sharon W. Barnes, Citizen Member  
Surya P. Dhakar, D.D.S.  
Charles E. Gaskins, III, D.D.S.  
A. Rizkalla, D.D.S.  
Tammy K. Swecker, R.D.H.  
James D. Watkins, D.D.S.  
Bruce S. Wyman, D.D.S.

**BOARD MEMBERS  
ABSENT:**

Evelyn M. Rolon, D.M.D.

**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:**

Jamie Hoyle, DHP Chief Deputy Director  
James E. Rutkowski, Assistant Attorney General

**ESTABLISHMENT OF  
A QUORUM:**

With nine members of the Board present, a quorum was established.

Ms. Swain introduced two new Board members, Dr. Alexander and Ms. Barnes, Ms. White, SRTA Executive Director, and Ms. Lemon, DHP Director of Enforcement Division. She added that Dr. Levin and Ms. Howard will be missed. She also thanked Board staff for their support and for keeping Board members up to date with changes.

**PUBLIC COMMENT:**

Ms. Swain explained the purpose of the public comment period, then asked for comments.

**Dr. Tegwyn Brickhouse**, Chair of Department of Pediatric Dentistry at VCU School of Dentistry, stated that sedation inspections should focus on patient safety to assess emergency preparedness and airway management and that the inspectors should be pediatric dentists and/or dental anesthesiologists for pediatric practices.

**Dr. Malinda Husson**, Director of Dental Anesthesia Services-Department of Pediatric Dentistry at VCU School of Dentistry, stated that pediatric dentistry residents are well trained in airway management.

**Dr. Patricia Wunsch**, Director of Advanced Education in Pediatric Dentistry at VCU School of Dentistry, stated that no one can do sedation inspections better than a person who has advanced training in airway management.

**Dr. Michael Link**, VDA President-Elect, thanked the Board members for their time and service. He commented that unannounced inspections are disruptive to dental practices and unfair to the 95% of licensees who practice sedation safely. He added that no other states do unannounced inspection. He noted that the true goal should be patient safety and, if the Board is concerned with licensees not being in compliance, then it should set stricter education requirements. He added that full inspections are burdensome and costly and asked the Board to delay implementation.

**Dr. Jacques Riviere** stated that the Board's current protocol does not, but should, address safety. He suggested that the Board follow the VSOMS model of using volunteers to test emergency preparedness.

**Gerald Canaan II, Esq., of Hancock, Daniel, Johnson & Nagle, P.C.**, stated that he was addressing the proposal to restrict continuance requests. He said there are many reasons for last minute requests to continue a hearing, and each request should be determined based on "good cause". He added that all respondents want to have their hearings as soon as possible; then asked the Board to consider this matter carefully.

**Dr. William Bennett** welcomed the new members and thanked current members for their work. He asked the Board to set standards and education requirements to promote ethics and professionalism. He also encouraged the Board to work with organized dentistry and educators to address issues affecting public safety.

**DHP DIRECTOR'S  
REPORT:**

Ms. Hoyle stated that Dr. Brown was not available because he was attending the CLEAR Conference. She then reported:

- Virginia is studying acceptance of military training in state licensing policies;
- Virginia is looking into licensing more mid-level providers to increase access to health care; and
- DHP is advancing legislation to require pre-licensure criminal background checks for RNs and LPNs. The agency is beginning this initiative with the Board of Nursing and will be expanding it to other boards in the future.

**APPROVAL OF  
MINUTES:**

Ms. Swain asked for approval of the minutes as listed on the agenda. Dr. Gaskins noted that the day specified on the September 10, 2014 minutes should be Wednesday, not Friday. Ms. Swain stated that all minutes would be adopted as amended.

**SRTA REPORT:**

Ms. White, SRTA Executive Director, gave a power point presentation on the history of SRTA and the American Board of Dental Examiners (ADEX), and reviewed each agency's organizational structure. She invited questions.

In response to questions, Ms. White said that:

- SRTA will retain its exam committees.
- SRTA supports having its examiners do exams for other testing agencies administering the ADEX exam.
- She believes state boards should exam for all tests it accepts.
- While the content of the ADEX exam is consistent across testing agencies, administrative practices vary and these practices can affect outcomes.
- She is not sure if it is possible that there will be one national exam accepted by all states.
- Other SRTA state boards do allow its current members to examine for NERB and receive compensation.
- NERB will send invitations to examine to board members in all states where ADEX is accepted.

With no other questions, Ms. Swain thanked Ms. White for her presentation and time.

**CONDUCTING FACILITY  
INSPECTIONS:**

Ms. Lemon, DHP Director of Enforcement, introduced Leith Ellis, Senior Inspector, and Pamela Twombly, Deputy Director of Enforcement. She explained the role of Enforcement referencing §54.1-2506 of the Code of Virginia and said that inspections are conducted to promote a culture of compliance and that DHP inspectors:

- Collect and analyze data,
- Are knowledgeable about inspection procedures, and
- Have been trained to apply laws and regulations based on observations.

She stated that inspections are addressed as an educational opportunity and inspections are conducted so as not to interrupt providers. She then asked Mr. Ellis to provide further information about inspection.

Mr. Ellis said that currently there are 500 facilities inspected for the health professions boards. He noted that he mainly works with the office managers to collect information and then meets with the dentists to review the information collected before leaving.

In response to a question, Ms. Lemon stated that 70% of unannounced inspections are routine or complaint driven. She added that an example of an announced inspection would be the inspections required before a new or relocated pharmacy can open for business.

With no further question, Ms. Lemon thanked the Board and Ms. Swain thanked Ms. Lemon and Mr. Ellis for their presentations.

**LIAISON/COMMITTEE  
REPORTS:**

**Board of Health Professions (BHP).** Ms. Swain congratulated Dr. Watkins on his appointment to BHP.

**AADB.** Ms. Swain noted that she, Dr. Wyman, and Ms. Reen will attend the AADB meeting in October, 2014, in Texas.

**ADEX.** Dr. Rizkalla stated that he and Dr. Rolon will attend the meeting in November, 2014, in Chicago.

**SRTA.** Dr. Rizkalla, Ms. Swecker and Dr. Watkins stated they had no information to add to their written reports.

**LEGISLATION AND  
REGULATIONS:**

**Status Report on Regulatory Actions.** Ms. Yeatts reported that the Periodic Review to reorganize Chapter 20 into four new chapters: 15, 21, 25 and 30, is still pending review by the Secretary of Health and Human Resources (SHHR).

**Status Report on Proposed Legislation on Fee-Splitting.** Ms. Yeatts reported that the wording was changed slightly since the Board's adoption in response to public comment and that the proposed legislation has been advanced to the SHHR for review.

**BOARD**

**DISCUSSION/ACTION:**

**Review of Public Comment Topics.** Ms. Swain opened the floor for discussion of the comments addressed to the Board then moved to the next agenda item when there was no response.

**Continuance Requests.**

Dr. Wyman asked the Board to direct that notices for disciplinary proceedings require attendance if a continuance request is not submitted at least two weeks in advance of the scheduled proceeding. Mr. Rutkowski stated that he and the presiding officer discuss all the continuance requests and that the Commonwealth is generally asked if it objects to the continuance. He advised the Board not to restrict the presiding officer's authority to grant continuances because each decision is very fact specific, and the right of the respondent must be taken into account.

**DANB's NELDA Program.**

Ms. Swain asked if there were any questions about the information provided about the new program then moved to the next agenda item when there was no response.

**REPORT ON CASE  
ACTIVITY:**

Ms. Palmatier reported on the Board's disciplinary case statistics, noting that for the fourth quarter of FY2014, the Board received 84 cases and closed 52 cases for a 62% clearance rate; which is down from 77% from last quarter, and 63% of the patient care cases were closed within 250 days, as compared to 74% from last quarter.

She pointed out that based on DHP Quarterly Performance Measures for the fourth quarter of FY2014, the Boards of Nursing and Medicine received three times the cases that Dentistry did in the fourth quarter, yet their numbers are consistently and significantly higher. She noted that essentially only five Board members are consistently returning within three weeks. She added that, on the previous day, the Board read 38 cases and also

received 9 new cases. She also noted that one dentist and one hygienist were summarily suspended, and one dentist was mandatorily suspended between May 28 and August 25, 2014.

Ms. Palmatier stated that effective as of July 1, 2014, an addition to Virginia Code §54.1-2400(10) changed the process for handling cases where there may be grounds to deny an application for licensure, certification, registration or permit. She noted that this change allows Special Conference Committees (SCC) to deny applications rather than make a recommendation to the Board. She requested guidance on whether or not the Board wants to have all the conferences addressing applications heard by the same SCC, or to divide the applicant cases among all the SCCs. She said that the benefit for keeping them with one committee is consistency in applying the requirements for licensure and the benefit to having all the SCCs hear these cases would be to reduce the length of time an applicant waits for a conference. Dr. Rizkalla moved to keep these cases with the same SCC. The motion was seconded and passed.

**GUIDANCE FROM  
BOARD COUNSEL:**

Mr. Rutkowski asked board members to be mindful of their demeanor during formal hearings and informal conferences, he advised Board members to focus on developing the facts of the case by asking respondents and witnesses questions related to the allegations and avoiding "I" statements. He said board members should never lecture, badger or engage in a debate with the respondent or with witnesses then noted that the appropriate place to educate the respondent is in the findings of fact and conclusions of law.

**EXECUTIVE  
DIRECTOR'S  
REPORT/BUSINESS:**

**SRTA and ADEX.** Ms. Reen asked the Board what action should be pursued in regards to NERB's expectation that sitting board members will examine for NERB. She explained that the legal advice received on this subject is that sitting Board members can examine for SRTA and participate in ADEX because the Board is a member of both agencies with all expenses related to travel for both agencies being reimbursed by SRTA in keeping with the State Travel Regulations. She added that the Board is not a member of NERB and has no agreement with that agency about travel expenses.

Ms. Swecker moved to explore the ability for sitting Board members to be examiners for testing agencies who administer the ADEX exam. The motion was seconded and passed.

Ms. Reen said she will explore if sitting Board members can examine for agencies administering the ADEX exam, and cautioned that the testing agencies might not agree to address reimbursement consistent with Virginia's State Travel Regulations.

**Adding Emergency Scenarios to Permit Inspections.** Ms. Reen referred the Board to the questions and answers regarding sedation and anesthesia permits and inspections noting that the questions were sent from the VDA and that she added the answers.

She said that, as requested at the last Board meeting, she has obtained the Virginia Society of Oral and Maxillofacial Surgeons' emergency scenarios and begun discussion with Enforcement staff on the feasibility of adding this component to the Board's inspections. She said she will also explore adding regulatory language for continuing education course requirements to have permit holders demonstrate competence to address emergency scenarios similar to the current requirements for ACLS courses.

She then noted her concern about the level of fear being experienced by permit holders over the prospect of being inspected and the advertisements of continuing education providers which foster that fear to promote participation in their course offerings. She reminded the Board that it has the non-disciplinary options of advisory letters and confidential consent agreements to address inspection findings.

Ms. Yeatts added that in regard to public comment calling for contracting with dentists to perform sedation inspection, the Code of Virginia requires inspectors to be DHP employees and sworn officers.

**Practice Ownership.** Ms. Reen stated that she met with Dr. Brown and Ms. Hoyle to discuss the Board's interest in convening a Regulatory Advisory Panel to discuss the influence of owners over the practice of dentistry. She added that Dr. Brown and Deputy Secretary Lee are facilitating a meeting with the Department of Medical Assistance Services to discuss this issue.

**Guidance Documents (GD).** Ms. Reen noted that in response to the Board's discussion at its last meeting, she has removed seven

or eight GDs from the Board's website pending their amendment to reflect changes in the regulations. She said she would bring additional revised documents to the December meeting, then presented two revised documents for action as follows:

- GD 60-17 has been updated to base the costs to be recovered on the actual expenditures in SFY 2014. Dr. Gaskins moved to adopt the revised GD 60-17. The motion was seconded and passed.
- GD 60-5 has been revised to reflect the current practice of having one person review a case for probable cause and the practice of offering pre-hearing consent orders in certain cases. Dr. Watkins moved to adopt the revised GD 60-5. The motion was seconded and passed.

**Board Staff.** Ms. Reen introduced Christine Houchens who is the licensing manager for the Board. Ms. Swain welcomed Ms. Houchens to the Board. Ms. Reen then reported that:

- Contracts are in place with a new OMS consultant and with a former board member to assist in case reviews,
- A request for professional case managers has been submitted, and
- Kathy Lackey, a Licensing Specialist who has been with the Board over 20 years and with the State over 49 years, is retiring. Her last day with the Board is October 17, 2014. Ms. Reen would like one official Board member to attend the recognition party for Ms. Lackey on October 14th. Ms. Reen added that Dr. Brown has approved the recruitment to fill this position.

**Information Security Standard.** Ms. Reen stated she learned that some Board members were downloading disciplinary cases to their smart phones for review. She provided the Information Technology Resource Management Standard which prohibits this action explaining that Board records can only be stored on state controlled equipment.

**Invitations to Board Members.** Ms. Reen asked Board members to be aware that they cannot accept free courses from CE providers.

**Sedation Inspection.** Ms. Reen asked the Board whether it wants to move forward with the sedation inspections or to delay implementation. Following discussion, a motion to suspend the inspections failed.

**Regulatory-Legislative Committee meeting 10/24.** Ms. Reen stated that this is provided as information only. She added that the

Exam Committee has not met due to the current workload and she hopes to schedule a meeting soon.

**Southern Conference of Deans and Dental Examiners.** Ms. Reen noted that typically the Board sends one member to attend the meeting but that Dr. Brown is encouraging sending more than one member to meetings such as this. She said that anyone interested in attending should let Ms. Swain know.

**JCHC Oral Health Study.** Ms. Reen requested guidance from the Board on how to respond to the inquiry about allowing dental hygienists to take classes, to qualify to perform expanded duties such as those permitted for dental assistants II as specified in 18VAC60-20-230 (DA II).

Ms. Yeatts suggested referring this matter to Regulatory-Legislative Committee at its 10/24 meeting. All agreed.

**ELECTION OF OFFICERS:**

Ms. Swain stated that the Nominating Committee met and the slate for officers are:

- Ms. Swain for President
- Dr. Gaskins for Vice-President
- Dr. Wyman for Secretary-Treasurer

Ms. Swain opened the floor for other nominations for each office. No additional nominations were made and nominations then were closed. Ms. Swecker moved to elect the officers as presented. The motion was seconded and passed.

**CASE RECOMMENDATIONS:**

**Case # 154001:**

**Closed Meeting:**

Dr. Gaskins 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 #150265. Additionally, it was moved that Board staff, Ms. Reen, Ms. Palmatier, Ms. Vu, and Mr. Rutkowski, Board Counsel 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:**

Dr. Gaskins subsequently 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 accept the recommendation from the Credentials Committee. The motion was seconded and passed.

**ADJOURNMENT:**

With all business concluded, the meeting was adjourned at 12:30 p.m.

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Melanie C. Swain, R.D.H., President

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Sandra K. Reen, Executive Director

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Date

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Date