Unapproved

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY-LEGISLATIVE COMMITTEE
December 5, 2013

TIME AND PLACE: The meeting of the Regulatory-Legislative Committee of the Board of Dentistry was called to order at 9:05 a.m., on December 5, 2013 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

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

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

MEMBERS ABSENT:
Surya P. Dhakar, D.D.S.
Myra Howard, Citizen Member

STAFF PRESENT:
Sandra K. Reen, Executive Director
Huong Q. Vu, Operations Manager

OTHERS PRESENT: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

ESTABLISHMENT OF A QUORUM: With eight members present, a quorum was established.

PUBLIC COMMENT: **None**

APPROVAL OF MINUTES: Dr. Levin asked if the members had reviewed the November 9, 2012 minutes. Dr. Gaskins moved to accept the November 9, 2012 minutes. The motion was seconded and passed.

REVIEW SEDATION AND ANESTHESIA PROPOSED FINAL REGULATIONS:

Timeline of Regulatory Development. Ms. Yeatts briefly reviewed the timeline of Board actions on the regulations and stated that the public comment period on the proposed regulations ends at 5:00 pm on December 6, 2013. She added that the Administrative Process Act requires an agency to wait 15 days after the conclusion of the comment period before final regulations are adopted. She said that in order to have the final regulations in effect by the March 15, 2014 deadline, the Committee needs to discuss the public comment received to date and recommend any amendments to the Executive Committee for adoption at the meeting scheduled for January 10, 2014.

Public Comment Received. Ms. Yeatts suggested that the comments received from the public be reviewed one by one to discuss any possible amendments and the response to be made. She then led the discussion of the comments received.

Ms. Yeatts noted that **Dr. Burns** commented at the public hearing and in writing asking that dentists who were self-certified in anesthesia and conscious sedation prior to January 1989 be allowed to continue with a permanent conscious/moderate sedation permit without any additional education requirement.

Ms. Reen noted that fourteen (14) dentists have obtained a temporary permit based on self-certification. She added that there is no provision for a dentist to be "grandfathered in" to qualify for the permit and added that the Board's previous discussions it was decided that these dentists should meet the education requirement for obtaining a renewable permit.

Dr. Wyman asked if the expiration of the temporary conscious/moderate sedation permits can be changed to give these dentists more time to complete the required education. Ms. Yeatts responded yes. Dr. Wyman moved to extend the expiration date of the temporary permits from September 14, 2014 to one year from the effective date of the final regulations. The motion was seconded and passed.

Ms. Yeatts added that Dr. Burns opposed the equipment requirements for precordial and pretracheal stethoscope and EKG machines. The Committee decided to make no changes to the equipment requirements.

Ms. Yeatts stated that **Dr. Pollard** also commented in favor of allowing dentists who were self-certified to continue practicing IV sedation without additional education which has been addressed.

Ms. Yeatts noted that **Dr. Leaf** requested modification of the documentation requirement for obtaining a permit since the school he attended is closed. Following discussion, no action was taken.

Ms. Yeatts noted that **Dr. Mayberry** opposed the requirements for ACLS training and for equipment such as laryngoscopes, EKG, and endotracheal tubes. After discussion, no action was taken.

Ms. Yeatts noted that **Dr. McAndrew** was concerned about the definition of morbidity and which events require written reports. Dr. Watkins stated that Guidance Document 60-4 explains the meaning of morbidity. Following discussion, no action was taken.

Ms. Yeatts noted that **Mr. Stallard** requested self-certified dentists be grandfathered in to qualify for the permit without further education and that requirement for an EKG and laryngeal mask airway be deleted. She added that these concerns have been addressed.

Ms. Yeatts noted that **Dr. Link** was concerned about the deletion of the definition for anxiolysis. She added that the proposed final regulations clarify that anxiolysis is included in minimal sedation. Following discussion, no action was taken.

Ms. Yeatts noted that **Dr. Dameron** requested grandfathering for self-certified dentists which has already been addressed.

Ms. Yeatts noted that **VSOMS** requested that the permit exemption for OMSs remain in place but language be added:

1. To restrict an OMS to performing anesthesia only in their primary or affiliated surgery offices. The OMS should sign an affidavit that the satellite offices are held to the same standard as the inspected office for equipment and staff.
2. OMSs who desire to provide "itinerant anesthesia" in office of dentists who do not have permits are not covered under the exemption and must obtain a permit from the Board.

Ms. Yeatts stated that she has consulted with Board Counsel and was advised that if an office does not have an AAOMS report then the dentist must have a permit. She added that the current Code does not permit the Board to address the requested changes. Following discussion, no action was taken.

Ms. Yeatts noted that **Dr. Hoard** recommended the following:

1. Keep the definitions for anesthesia and the levels of sedation and use the ASA definitions. Ms. Yeatts said that these definitions were moved to a new section of definitions specific to sedation and anesthesia. Following discussion, no action was taken.
2. No written consent is needed for nitrous oxide as a single agent. Following discussion, no action was taken.
3. An exception be made for patients under the age of 12 to have medication administered prior to arrival at a dental office. Following discussion, no action was taken.
4. Clarification about whether the 2nd person in the operatory can act as both the dental assistant and the monitor when anxiolysis is being administered. Following discussion, it was agreed by consensus that the second person is permitted to act as the dental assistant and to monitor the patient. no action was taken.
5. "Pulse and heart rate" are redundant. After discussion, the Committee agreed by consensus to delete "heart rate."

Additional changes considered: Ms. Yeatts asked if there were any other changes to be discussed before acting on the regulation. The following actions were agreed to by consensus:

18VAC60-20-107.E – replace '*the patient record shall also include*" with "***the dentist shall include in the patient record***"

18VAC60-20-107.F – replace the word "*child*" with the word "***patient.***"

18VAC60-20-107.G (1) – delete the word "**is**" in the first line.

18VAC60-20-107.I – replace "*or conscious sedation*" with "***or conscious/moderate sedation***" and make this change throughout the regulations.

18VAC60-20-120.H (3) on P29 – replace the word "*child*" with the word "***patient.***"

Ms. Reen asked for clarification of who is responsible for assuring the required equipment and staffing is in place when the dentist uses the services of another licensed health professional to administer general anesthesia, deep sedation or conscious/moderate sedation in his office. Following discussion, it was agreed the regulations should state that the dentist is responsible. Ms. Yeatts suggested adding **18VAC60-20-107.J (1) and (2)** to address these responsibilities. Dr. Watkins moved to adopt Ms. Yeatts' suggestion. The motion was second and passed.

Dr. Watkins moved to recommend that the Executive Committee adopt the proposed final regulations as amended by the Committee. The motion was seconded and passed.

Ms. Reen added that staff may need to make editorial changes to accomplish the Committee's decisions.

NEXT MEETING TO REVIEW THE PROPOSED FINAL REGULATIONS FOR FOUR CHAPTERS:

Ms. Reen recommended scheduling the next meeting on February 7, 2014 and said there must be at least six (6) Board members available. Six of the members present indicated that they are available to meet on February 7th.

REVIEW AND PRIORITIZE ASSIGNED TOPICS FOR SUBSEQUENT MEETINGS:

Ms. Reen asked the Committee to prioritize the assigned topics for action because it was not feasible to research and develop all of the topics at the same time.

She also noted that the Board voted to appoint a Regulatory Advisory Panel (RAP) to address Practice Ownership and Fee Splitting. She referred the Committee to the Public Participation Guidelines and explained that the purpose of a RAP is to obtain specialized and technical assistance. She then asked what types of professionals should be sought for the panel.

Ms. Yeatts noted that the Board of Medicine and the Board of Pharmacy do have fee splitting regulations in place that she can review and report findings at

the next meeting. She suggested that there is no need for a panel to address this topic. All agreed.

Dr. Gaskins moved that the State Corporation Commission be asked to assist in addressing practice ownership and formation of the RAP. The motion was seconded and passed.

After discussion, the pending topics were prioritized as follows:

1. Practice Ownership – to address ownership by non-dentists and by corporations. Ms. Reen agreed to research sources of assistance on this topic.
2. Sedation/General Anesthesia Permit Holders Office Inspections – to develop policies and procedures for implementing practice inspections for sedation/anesthesia permit holders. Ms. Reen suggested that staff start working on the language for review. All agreed.
3. DAII Registration Options for Qualifying – to consider regulatory action to permit dental hygienists to qualify to perform expanded functions and to consider military training as a possible pathway for registration. Defer action for now.
4. Dental Role in Treating Sleep Apnea – to address the Board's position. Defer action for now.

Guidance Document on Advertising Complaints – Ms. Reen stated that the Board agreed to develop this document in response to repeated complaints that it is not doing enough to address unethical advertising. The guidance to be provided is what types of advertising claims are "legal" or "illegal" in Virginia. Following discussion, Dr. Rizkalla moved to recommend that the Board drop the Guidance Document from its list of pending actions. The motion was seconded and passed.

ADJOURNMENT: With all business concluded, Dr. Levin adjourned the meeting at 12:16 p.m.

Jeffrey Levin, D.D.S., Chair

Sandra K. Reen, Acting Executive Director

Date

Date