Unapproved

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY-LEGISLATIVE COMMITTEE
February 7, 2014

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 February 7, 2014, 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.
Al Rizkalla, D.D.S.
Melanie C. Swain, R.D.H.
Tammy K. Swecker, R.D.H.
James D. Watkins, D.D.S.

MEMBERS ABSENT:
Surya P. Dhakar, D.D.S.
Myra Howard, Citizen Member
Evelyn M. Rolon, D.D.S.
Bruce S. Wyman, D.M.D.

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 six members present, a quorum was established.

PUBLIC COMMENT: Melanie Bartlam, RDH, representing the Virginia Dental Hygienists' Association (VDHA), corrected the January 10, 2014 letter sent to the Board by the VDHA President. The appropriate regulations of their concern are: 18VAC60-25-100(B) and 18VAC60-25-100(C).

APPROVAL OF MINUTES: The Committee's December 5, 2013 minutes were approved as published and circulated.

STATUS REPORT ON REGULATORY ACTIONS: Ms. Yeatts reported the following:

- Periodic Review – the proposed regulations to establish four chapters were approved by the Governor. The public hearing was held on January 10, 2014. The public comment period ended on January 11, 2014, and two comments were received.
- The renewal deadline for a faculty license is stated in §54.1-2713.D of the Code, as amended in 2012. As a result, the deadline stated in the Regulations Governing Dental Practice was amended by the Board at its

September, 2013 meeting to conform to the statute. The correction was approved for publication, and it will be effective as of February 12, 2014.

- Sedation and Anesthesia permits for dentists - the emergency regulations will expire on March 15, 2014. It is no longer possible to have final regulations in place by March 15th, because they 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 current regulatory process is completed.

REPORT OF THE 2014 GENERAL ASSEMBLY:

Ms. Yeatts reported there are eight DHP bills before the General Assembly and they are advancing without opposition. She reviewed the following bills:

- HB539 authorizes dispensers who are authorized to access the information in the possession of the Prescription Monitoring Program to delegate the authority to certain health care professionals employed at the same facility and under their direct supervision.
- HB611 creates an exception to the denial or suspension of a license, certificate or registration by a board within DHP for surrender in lieu of disciplinary action in another jurisdiction for cases in which the revocation or suspension in the other jurisdiction is the result of nonrenewal of the license, registration, or certification.
- HB661 increases the statute of limitations for prosecutions from one year to five years for a misdemeanor of falsifying patient records with the intent to defraud.
- HB855 requires an applicant for reinstatement whose license, registration, or certificate has been revoked to show evidence that he is safe and competent to practice.
- HB874 authorizes the Board of Pharmacy to identify "drugs of concern" and to require reporting even though it is not a scheduled drug.
- HB891 provides that special conference committees may consider applications for a license, certificate, registration, permit or issuance of a multistate licensure privilege and may grant or deny the application or issue a restricted license, certification, registration, permit, or multistate licensure privilege. The bill also provides that special conference committees may hear cases in which a holder of a permit issued by a health regulatory board is reported to be the subject of disciplinary action.
- HB923 requires the director of the Prescription Monitoring Program to mail information to a mailing address indicated on the recipient request form.
- SB635 authorizes any trained employee of a licensed restaurant, summer camp, or campground to possess and administer epinephrine.

- SB647 directs DMAS to create and to report on a teledentistry pilot program to provide dental services to eligible school-age children.

REVIEW REORGANIZING CHAPTER 20 INTO FOUR CHAPTERS PROPOSED FINAL REGULATIONS:

Dr. Levin noted that the Board is charged with periodic regulatory review. Ms. Yeatts stated that the review is required every four years from when the last review results become effective.

Ms. Reen asked the Committee members to address any changes or needed clarification as the proposed regulations are presented. The Committee's recommendations will be considered by the Board at its March meeting.

Dr. Levin asked Ms. Yeatts to lead the review.

Public Comment Received. Ms. Yeatts noted that only two comments were submitted. She stated that the comments already were merged into the chapters for review and action by the Committee.

1) The Dental Assisting National Board (DANB) suggested that the Dental Auxiliary Learning and Education (DALE) Foundation, which is DANB's affiliate, be added as a continuing education provider.

2) The Virginia Dental Hygienists' Association (VDHA) asked the Board to:

- add administration of ***local anesthesia only*** for dental hygienists.
- remove the (patient) age restriction for hygienists to administer local anesthesia.
- remove the requirement for licensed hygienists to take four (4) hours of the CE hours required every two (2) years on the specific topic of "administration of nitrous oxide and non topical anesthesia."

Ms. Yeatts noted that in regard to the age restriction request from the VDHA, the Board is not authorized to make this change because it is set in the Code of Va.; so only the General Assembly could make this change.

Adopt Recommendation to the Board. Ms. Reen noted that Chapter 21, Chapter 25, and Chapter 30 were also provided on colored paper as references for action on the public comments received, and to allow review of the regulatory changes that have been made since the Committee last worked on these chapters. She suggested that the Committee look at both the white and colored copies side by side as the proposed chapters are discussed.

CHAPTER 15 Regulations Governing the Disciplinary Process

Ms. Yeatts noted that no changes have been made in this chapter. Dr. Watkins moved to recommend that the Board adopt Chapter 15 as presented. The motion was seconded and passed.

CHAPTER 21 Regulations Governing the Practice of Dentistry

18VAC60-21-10.A - Ms. Reen noted that this new section was added to identify the terms defined in the Code of Virginia.

18VAC60-21-10.B - Ms. Yeatts stated that the "Deep sedation" definition includes an additional sentence that was included in the Emergency Regulations for Sedation and Anesthesia Permits (hereinafter referred to as the Emergency Regulations).

Ms. Swecker asked for clarification of the term "*at a later date*" in the "Direct supervision" definition. Ms. Reen stated that it means that a dental assistant II can complete a delegated procedure on another day.

Ms. Reen noted that the term "immediate" was added to the definition of "Direction" to be consistent with the Emergency Regulations.

Ms. Yeatts stated that the definition of "Titration" was also added to be consistent with the Emergency Regulations.

18VAC60-21-30.B – Ms. Yeatts noted that staff replaced "*a dentist shall display **a** license*" with "*a dentist shall display **his** license.*" After discussion, the Committee recommended "*a dentist shall display **his dental** license.*"

18VAC60-21-30.D – Ms. Reen noted that the language of this section was changed to be consistent with the Emergency Regulations.

18VAC60-2-40.A(4) and (5) – Ms. Yeatts noted that the Dental teacher's license is stricken because it was deleted legislatively in 2012. She added that a Dental faculty license is now $400, instead of $285.

18VAC60-21-50 and 18VAC60-21-60 – Ms. Reen noted that these two (2) sections were added using some of the provisions in Guidance Document 60-15 on Standards for Professional Conduct in the Practice of Dentistry.

Dr. Gaskins requested a requirement for disclosure of financial incentives received or paid for referrals in 18VAC60-21-60.B. Dr. Levin suggested the Board address this at another time so that these regulations (en-toto) do not have to undergo another comment period. All agreed.

18VAC60-21-70.A – Ms. Yeatts noted that the phrase "*and dental hygiene*" was deleted here since this chapter addresses the practice of dentists.

18VAC60-21-70.A(1) – Ms. Yeatts stated that the language in this section is new. She added that the phrase "*or dental hygienist*" was deleted because this chapter addresses the practice of dentists. She said the phrase "*or a registered dental assistant II*" was added to address that scope of practice. After discussion, the Committee added the word "***dental***" before '*service or operation.*" All agreed.

18VAC60-21-80.C and D – Ms. Reen posed two questions for the Committee in regard to these sections:
For C – What should be said about offers for which the dentist never charges a fee, or about offers that are not time-limited?
For D – What should be said about advertisements on the internet?

Dr. Gaskins asked how other DHP boards address advertising. Ms. Yeatts replied that she was not aware that any board had addressed internet advertising to date. Dr. Rizkalla suggested more time is needed to think about these two (2) sections.

After discussion, the Committee made the following changes:
For C – added "*if any*" after "*or full fee*"
For D – added "*or archived*" after "*a prerecorded*"; deleted "*on radio or television*"; replaced "*12-month period*" retention to "*two year period*" retention.

18AC60-21-80.E – Ms. Reen noted that staff replaced "*CDT-2011/2012*" with "*in effect at the time the advertisement is issued.*"

18VAC60-21-80.G(3) – Ms. Yeatts noted that the only change here is "*November, 2013.*"

18VAC60-21-90.B(6) – The Committee added "***and teeth identified.***"

18VAC60-21-90.B(7) – Ms. Yeatts noted that staff edited this section to say "*treatment rendered, the.*"

18VAC60-21-90.G - Ms. Yeatts noted that staff edited this section to say "*licensed dentist*" instead of "*licensee.*"

18VAC60-21-100 – after discussion, the Committee added after "*neurological complication*" the phrase ***"that was related to dental treatment or services provided"*** and added this sentence at the end of the section - ***Any emergency treatment of a patient by a hospital that is related to any sedation and anesthesia shall also be reported.***"

18VAC60-21-120 – Ms. Yeatts noted that "s" needed to be deleted at the end of the word "*supervision*" in the section heading.

18VAC60-21-140.A(1) – the Committee deleted the phrase "*by the dentist.*"

18VAC60-21-160.A – Ms. Yeatts stated that staff replaced "*under the indirect or under general supervision required in 18VAC60-21-120*" with "***under indirect supervision***" to be consistent with the previous sections on delegation. All agreed.

18VAC60-21-160.B (blue page 20 or White P33) - Ms. Yeatts stated that staff replaced "*shall be under the direction of the dental hygienist*" with "***shall be***

performed under the direction and indirect supervision of a dental hygienist" to be consistent with the previous sections on delegation. All agreed.

18VAC60-21-190.A – Ms. Yeatts stated that staff edited this section to say "*Application for an unrestricted dental license, registration, or permit issued by the board shall include*"

18VAC60-21-190.A(1) – after discussion the Committee added "***as specified in 18VAC60-21-200.***"

18VAC60-21-190.A(3) – Ms. Reen noted that staff edited this section because the data banks have been merged.

18VAC60-21-230.B – Ms. Yeatts noted that this section was deleted since there is no longer a teacher's license.

18VAC60-21-230.C – Ms. Yeatts noted that this now becomes the new section B and said that "*Full-time faculty*" was replaced with "***Faculty license*** "to conform to the Code.

18VAC60-21-230.E(1)(a) – Ms. Yeatts stated that staff replaced "*another state*" with "***another U.S. jurisdiction***."

18VAC60-21-240.B – Ms. Yeatts noted that staff added "***or a permit to administer conscious/moderate sedation, deep sedation, or anesthesia***" for March 31 renewals, and moved "***a faculty license***" to the sentence on June 30 renewals.

18VAC60-21-250.A(1) – Ms. Reen noted that the sentence allowing CE credit for passing the Virginia Dental Law Exam was deleted because the Board no longer has a contractor to administer the exam. She added that the Board still administers the exam for licensees who are required by Board Order to pass the exam.

18VAC60-21-250.A(2) – Dr. Rizkalla moved to add "*for healthcare professionals*" after "basic life support." The motion was seconded. Dr. Watkins asked what the difference is between basic CPR and CPR that is provided for healthcare professionals. After discussion, staff was asked to provide information for the March Board meeting and Dr. Rizkalla was allowed to withdraw his motion.

18VAC60-21-250.C(1) and (6) – Ms. Yeatts noted that staff added "***continuing education***" before "*providers.*"

18VAC60-21-250.C(14) – Ms. Yeatts noted that staff added the DALE Foundation as a DANB affiliate in the list of CE providers, as requested by DANB. All agreed.

18VAC60-21-260.I(1) – Ms. Yeatts noted that staff has replaced "*an approved*" with "***a.***" .

18VAC60-21-280.C(2a) – Ms. Yeatts noted that staff has added "***parenterally***" in front of "*administer Schedule VI.*"

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

CHAPTER 25 Regulations Governing the Practice of Dental Hygiene

18VAC60-25-20.B – the Committee added "***dental hygiene***" in front of "*license.*"

18VAC60-25-40.C(1) (yellow page 6 or White P62) – The Committee deleted "*by the dentist.*"

18VAC60-25-40.F – Ms. Yeatts noted that this new section was added to address Virginia Dept. of Health (VDH) dental hygienists practicing under the remote supervision of a VDH dentist. She added that this practice is authorized by §54.1-2722(E) of the Code of Virginia.

18VAC60-25-100.A(3) – Ms. Yeatts noted that staff moved "***parenterally***" to follow after "***local anesthesia.***"

18VAC60-25-100.C – Ms. Yeatts noted that in response to the VDHA's comment, staff recommends deleting the language in this section and replacing it with the proposed requirement for a 28 hour course for administration of local anesthesia. She added that anyone wanting to only administer nitrous oxide could take the 8 hour course. All agreed.

18VAC60-25-110.A(5) – The Committee added "***and teeth identified.***"

18VAC60-25-110.A(7) – the Committee added "***treatment rendered.***"

18VAC60-25-130.A – Ms. Yeatts noted that staff deleted "*temporary permits*" and "*teacher's.*"

18VAC60-25-130.A(3) - Ms. Reen noted that staff changed this section to reflect that the data banks have been merged.

18VAC60-25-160 – Ms. Yeatts noted that staff deleted the word "*teacher's*" from the section heading.

18VAC60-25-190.A(2) – Ms. Yeatts noted that the VDHA recommended a change in this section. Ms. Swecker moved to delete '***administers nitrous oxide or nontopical local anesthesia***" The motion was seconded and passed. The Committee also deleted "***administration or***" after "*related to.*"

18VAC60-25-90.C(14) - Ms. Yeatts noted that staff added the DALE Foundation as a DANB affiliate in the list of CE providers as requested by DANB. All agreed.

18VAC60-25-190.C(15) – Ms. Yeatts noted that the Board added the American Academy of Dental Hygiene as a CE provider at its March 8, 2013 meeting.

Ms. Swain moved to adopt Chapter 25 as amended. The motion was seconded and passed.

CHAPTER 30 Regulations Governing the Practice of Dental Assistants

18VAC60-30-10.B – Ms. Reen noted that the term "immediate" was added to the definition of "Direction."

18VAC60-30-20.B - the Committee added the provision for a duplicate license used in Chapter 25.

18VAC60-30-70.A - Ms. Yeatts stated that staff deleted the references to general supervision. All agreed.

18VAC60-30-70.B – The Committee replaced "*to a dental assistant*" with "*to **any** dental assistant.*"

18VAC60-30-80 – Ms. Yeatts noted that staff replaced "*No dentist or dental hygienist shall permit a person not otherwise licensed by this board to*" with "***A dental assistant I or II shall not***"

18VAC60-30-100.A(2) – The Committee added "***and teeth identified.***"

18VAC60-30-100.A(3) – The Committee added "***treatment rendered.***"

18VAC60-30-115 – Ms. Reen suggested adding this new section in this location. All agreed.

18VAC60-30-130 – Ms. Yeatts noted that this section was moved to 18VAC60-30-115.

18VAC60-30-150.F – Ms. Yeatts noted that staff deleted this section because there is no CE requirement for renewal or reinstatement.

18VAC60-30-160.B – Ms. Yeatts noted staff added language on continuing competence in this section.

18VAC60-30-170.B – Ms. Yeatts noted that staff specified DANB as a credentialing organization.

18VAC60-30-170.D – Ms. Yeatts noted that this is a new section that staff has added. No other change was made.

Dr. Watkins moved to adopt Chapter 30 as amended. The motion was seconded and passed.

NEW BUSINESS:

Dr. Gaskins proposed replacing the current text in 18VAC60-20-71(2) on licensure by credentials for dentists with the following:

"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 programs or a post-doctoral education program in any other specialty."

He explained that the current language is misleading to applicants and difficult for the Credentials Committee to apply correctly. He asked that this change be made by the Board at its March meeting. Ms. Reen explained that this change needed to be done in the current regulatory process or pursued separately as a new regulatory proposal. She suggested deferring this discussion to the March Board meeting, and asked Kelley to address the issues experienced by the Credentials Committee as part of her report. All agreed.

ADJOURNMENT: With all business concluded, Dr. Levin adjourned the meeting at 1:42 p.m.

Jeffrey Levin, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date