Unapproved

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY-LEGISLATIVE COMMITTEE
May 2, 2014

TIME AND PLACE: The meeting of the Regulatory-Legislative Committee of the Board of Dentistry was called to order at 1:00 p.m., on May 2, 2014, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, Virginia.

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

MEMBERS PRESENT: Charles E, Gaskins, III., D.D.S.
Melanie C. Swain, R.D.H.

MEMBERS ABSENT: Evelyn M. Rolon, D.D.S.

OTHER BOARD MEMBERS: Al Rizkalla, D.D.S.
Bruce S. Wyman, D.M.D.

STAFF PRESENT: Sandra K. Reen, Executive Director
Kelley W. Palmatier, Deputy Executive Director
Huong Q. Vu, Operations Manager

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

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

PUBLIC COMMENT: Steven Lindauer, DMD, Chair of VCU Department of Orthodontics, addressed the use of dental assistants in orthodontic practice and provided a list of duties for reference by the Board.

L. Warren West, DDS, of the Virginia Society of Oral Maxillofacial Surgeons, commented that the draft permit holder office inspection form does not ask the dentist and staff to demonstrate the ability to handle emergency situation and that the people who conduct the inspection should be clinicians who are knowledgeable about sedation.

Ms. Reen introduced Jamie Hoyle who is the new DHP Chief Deputy Director.

APPROVAL OF MINUTES: Dr. Levin asked if Committee members had reviewed the February 7, 2014 minutes. Dr. Gaskins moved to accept the minutes. The motion was seconded and passed.

STATUS REPORT ON REGULATORY ACTIONS:

Ms. Yeatts reported that the:

- Periodic Review of proposed regulations to establish four chapters are under review at the Secretary's office.
- Sedation and Anesthesia final regulations were approved by the Governor and will be effective on May 7, 2014.

Final Report of 2014 General Assembly (GA) - Ms. Yeatts stated this report includes the bills addressing health professions that passed this year, with one exception. She said that SB647 which would require DMAS to create a teledentistry pilot program for eligible school-age children was continued to 2015 in Appropriations Committee. She added that SB294 requires all prescribers, including dentists, to register with the Prescription Monitoring Program.

FEE SPLITTING:

Ms. Yeatts stated that the Committee asked her to develop a proposal to address concerns advanced through public comment about fee splitting between dentists and with third parties. She reviewed her findings in the following materials:

- American Dental Association (ADA) Principles of Ethics and Code of Professional Conduct
- ADA Legal Issues in Marketing a Dental Practice: Referral Gifts and Groupon Discounts
- New York Law Journal article on Internet Discounts On Health Care Services: Strictly Illegal (January 24, 2012, Volume 214 – NO. 7)
- California Business and Professions Code Sections 650-657
- Virginia Board of Dentistry Guidance Document 60-15
- Virginia Board of Medicine Code and Regulatory Provisions
- Draft Legislative Proposal for a Prohibition on Fee-Splitting or Rebates

Ms. Yeatts noted that currently there is nothing in the statue specific to fee splitting so if the Committee sees the need to forward this legislatively, the Board needs to act at its June meeting in order to meet the proposal deadline for the 2015 General Assembly.

Dr. Wyman stated that in Northern VA, it is a common practice for surgeons to provide restorative components to dentists for patients receiving implant treatment. He asked if this practice would be prohibited by the proposal and noted that the benefit is that the components are the appropriate size. He added patients may not be aware of this practice and may end up paying twice for the components. Dr. Rizkalla said that in his opinion this practice hasd become a financial incentive for patient referrals.

Dr. Wyman stated that he is also concerned about the practice of annual holiday gifts given by specialists to general dentists, the amount or value of which is frequently related to the number of patients referred. Ms. Yeatts commented that if a dentist receives a gift based on the number of referrals then the dentist is receiving a rebate.

Ms. Reen asked Ms. Yeatts if there is provision on inducement in her research and whether the Committee needs to add this language to the discussion draft. Ms. Yeatts stated that CA does have inducement language in its Code. Ms. Yeatts then suggested to add the following language to the discussion draft "***accept or tender compensation or inducement whether in the form of money or otherwise***" right after "*No dentist shall directly or indirectly accept or tender a rebate,*" By consensus, the Committee agreed.

Dr. Gaskins moved to recommend the proposed draft legislation to include inducement for consideration by the Board on June 13, 2014 meeting. The motion was seconded and passed.

PRACTICE OWNERSHIP:

Ms. Reen stated that the Committee is charged to work with a Regulatory Advisory Panel (RAP) to develop a proposal to address concerns advanced through public comment and through disciplinary cases regarding:

- Sole proprietorships
- Large corporate dental practices, and
- Practice management companies.

She added that the following materials are provided to facilitate discussion:

- A historical provision of law on what constitutes the practice of dentistry
- Excerpts from the Code of Virginia
- A policy statement adopted by the Tennessee Board of Dentistry
- The Department of Taxation's listing of business entity types
- The State Corporation Commission's listing of entity types and categories
- Congressional Joint Staff Report on the Corporate Practice of Dentistry in the Medicaid Program
- North Carolina's Law on Dental Management Arrangements, and
- Texas' Law and Regulations on Control of Dental Practice

Ms. Reen asked for guidance on the goals or concepts to be addressed with the the RAP to facilitate invitations to the appropriate agencies for technical assistance to assist the Board in identifying a strategy to address the concerns which is within the Board's scope of authority.
After discussion of the materials, by consensus, the Committee decided that the Board wants the authority to address ownership and practice management organizations. It agreed to use the Texas law and regulations as the model for discussion.

PERMIT HOLDER OFFICE INSPECTIONS:

Revised Inspection Form – Ms. Reen stated that, with the final sedation and anesthesia permit regulations becoming effective on May 7, 2014, it is time to institute the planned periodic inspections. She noted that board and enforcement staff developed the revised form and draft guidance document for discussion. She commented that this form is a multi-use form which can be

used for complaint investigations, compliance cases, and periodic inspections for permit holders. She asked the Committee to give direction to staff for developing the documents for presentation to the Board. Ms. Reen noted that the inspections will be conducted by DHP inspectors or investigators who will collect the information and forward the inspection results to the Board for review.

Several members of the public objected to the multi-use form as being too intrusive and unfair to permit holders. They also expressed concern about using DHP staff to conduct the inspections and that the form does not address emergency preparedness. The Committee discussed these concerns with them. During the discussion, Ms. Reen said the Board has the authority to look at the whole environment in order to protect the public, that review of emergency preparedness should be added to the form and that many of DHPs inspectors are health profession licensees.

Dr. Gaskins moved to forward the draft form with the addition of emergency preparedness to the Board for consideration. The motion was seconded and passed.

Guidance Document (GD) - Ms. Reen stated that the proposed guidance document addresses the scope and implementation of the periodic office inspections for permit holders. She added that the draft GD is presented for review and action by the Committee.

Dr. Gaskins moved to forward it to the Board for consideration on June 13, 2014 meeting. The motion was seconded and passed.

NEW BUSINESS:

Dr. Gaskins proposed a draft guidance document to address the record keeping requirements for endodontic root canal treatment. He stated that he has reviewed and heard numerous Board cases where root canal treatment and documentation has been of great concern. He added that his draft has been reviewed by seven board certified endodontists who confirmed these standards for endodontic treatment. He noted that the following optional items should be deleted from the list:

- Access Notes/Difficulties, Intra-Coronal Findings, etc.
- State of Pulp
- Trail Length (s)/Per Canal.

Dr. Gaskins agreed to include introductory information to the guidance document. By consensus, the Committee agreed to forward the draft to the Board for consideration at the June 13, 2014, meeting.

NEXT MEETING:

The dates of August 15 or 22, 2014 were identified as options for the next Committee meeting. Ms. Reen said the Committee members will be polled for availability. All agreed.

ADJOURNMENT:

With all business concluded, Dr. Levin adjourned the meeting at 3:41 p.m.

Virginia Board of Dentistry
Regulatory-Legislative Committee
May 2, 2014

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