

**VIRGINIA BOARD OF DENTISTRY
MINUTES
September 16, 2016**

- TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:15 a.m. on September 16, 2016, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 3, Henrico, Virginia 23233.
- PRESIDING:** A. Rizkalla, D.D.S., President
- BOARD MEMBERS PRESENT:** John M. Alexander, D.D.S.
Tonya A. Parris-Wilkins, D.D.S.
Patricia Bonwell, R.D.H., PhD.
Nathaniel Bryant, D.D.S.
Augustus Petticolas, D.D.S.
Tammy Ridout, R.D.H.
James D. Watkins, D.D.S.
Bruce S. Wyman, D.M.D.
- BOARD MEMBERS ABSENT:** Carol Russek, J.D.
- STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board
Kelley Palmatier, Deputy Executive Director for the Board
Christine M. Houchens, Licensing Manager for the Board
- COUNSEL PRESENT:** James E. Rutkowski, Assistant Attorney General
- OTHERS PRESENT:** Lisa R. Hahn, Chief Deputy Director, DHP
- ESTABLISHMENT OF A QUORUM:** With nine members of the Board present, a quorum was established.
- Ms. Reen read the emergency evacuation procedures.
- Dr. Rizkalla explained the parameters for public comment and opened the public comment period.
- PUBLIC COMMENT:** **Linda D. Wilkinson, MPA**, CEO of the Virginia Association of Free and Charitable Clinics, said the statute and regulations for practice of dental hygienists under remote supervision fail to address the intended purpose of facilitating free and low cost services in free clinics and federal health centers. She commented that her

organization serves 75,000 low income uninsured patients, in 60 free clinics which are staffed by 600 volunteer dentists and 197 volunteer dental hygienists. She noted her association's commitment to changing the statute in the upcoming General Assembly.

**APPROVAL OF
Minutes:**

Dr. Rizkalla asked if there were any corrections to the June 9, 2016 Formal Hearing minutes; June 10, 2016 Business Meeting minutes; the June 10, 2016 Special Session Minutes, the June 30, 2016 and August 2, 2015 Telephone Conference Call minutes and the August 12, 2016 New Board Member Orientation minutes. These minutes were approved as published.

**DHP DIRECTOR'S
REPORT:**

Ms. Hahn reported that on October 24, 2016 DHP will host a Board Member Training event intended for all current board members. She noted that the topics would be the Freedom of Information Act; appropriate conduct as a board member; and, the life of a field investigator. She added that Dr. Brown and Ms. Yeatts will discuss the roles and responsibilities of the boards and DHP as an umbrella agency.

Ms. Hahn addressed the work of Governor Terry McAuliffe's Prescription Drug Task Force and discussed the growing epidemic of prescription opioid and heroin overdoses in Virginia. She asked the Board to consider developing opioid prescription guidelines for dentists. It was noted that prescription opioid abuse is mostly associated with chronic pain. Dr. Alexander suggested that the guidelines should distinguish between acute and chronic pain.

**LIAISON/COMMITTEE
REPORTS:**

Board of Health Professions (BHP). Dr. Watkins stated he did not have anything to add to his written report.

AADB. Dr. Rizkalla noted that he, Dr. Alexander, Dr. Wyman and Ms. Reen will be attending the AADB Annual Meeting on October 18-19, 2016. He noted that the Board is paying for four memberships in the AADB to enable these four individuals to participate in the discussion of clinical examinations for licensure. Ms. Reen provided background information on the ADA's forum on creating a national Objective Structured Clinical Examination and the current clinical exam options available to states. She encouraged board members to develop an understanding of this issue.

ADEX. Dr. Rizkalla gave a brief overview of the 2016 annual ADEX meeting and the changes to the ADEX dental and dental hygiene exams. He stated that the ADA was present at this meeting and the pros and cons of ADA's involvement in testing was

discussed. Several Board members commented on the need for portability of dental licenses.

SRTA. Dr. Watkins reported on the annual SRTA meeting, noting that, since SRTA had left ADEX, the SRTA exam had to be rewritten. He stated that VCU will no longer host administration of the SRTA examinations which has hurt SRTA. He reported that SRTA is now exploring opportunities to administer in other states to provide competition to ADEX.

CITA. Dr. Rizkalla noted that CITA is now administering the ADEX exam at VCU and asked Ms. Reen to address examining for the Council of Interstate Testing Agencies. She reviewed CITA's policies for examiners and reported that Board members could elect to examine for CITA and accept reimbursement for actual expenses which are within the parameters of Virginia's State Travel Regulations when such travel was approved in advance. She explained that the per diem CITA pays examiners in addition to the actual expenses incurred could not be offered to or accepted by any Board member who examines for CITA. She further explained that the Board member would be personally responsible for any actual expenses incurred which exceeded those permitted for reimbursement in the State Travel Regulations. Ms. Reen was asked to correspond with CITA to report there are Virginia Board members interested in examining for CITA and to seek CITA's agreement to abide by Virginia's travel regulations for these members. Discussion followed in which portability of a license was identified as the major concern of several members.

LEGISLATION AND REGULATIONS:

Status Report on Regulatory Actions. Ms. Reen reported that the Board has four fast track regulatory actions underway addressing the Public Participation Guidelines; qualifications for restricted or temporary licenses; CE credit for volunteer hours; and the administration of nitrous oxide only. She said the regulatory action to require capnography for monitoring anesthesia or sedation is in the public comment period in the standard regulatory process. The comment period ends on 10/21/2016 and the Board will consider the comments received at its December meeting and decide how to proceed.

Adoption of Emergency Regulations on Remote Supervision of Dental Hygienists. Ms. Reen referred to the minutes of the May 6, 2016 Regulatory/Legislative Committee meeting and explained that the Board needed to adopt the regulations today to meet the enactment clause of the statute. She said the Board could not

address its concerns about the employment and periodontal provisions in the statute in this regulatory action because the regulations must reflect the language used in the statute. She added the Board can then begin the standard regulatory process for these regulations which may take 18 months or more to complete. She explained that the statute needed to be amended by the General Assembly to address the concerns about the employment and periodontal provisions which have been discussed with the VDA. Dr. Rizkalla asked the Board to allow him to contact and work with various groups to address the Board's concerns about the current statutory language. The motion by Dr. Petticolas to approve Dr. Rizkalla's request was seconded and passed. The motion by Dr. Watkins to adopt the emergency regulations as presented was seconded and passed.

Adoption of Guidance Document on Remote Supervision.

Amending the term "periodontal disease" to read "severe periodontal disease" was proposed and Board Counsel advised that the document must be consistent with the language in the statute. Dr. Watkins moved to adopt the guidance document as presented. This motion was seconded and passed.

Adoption of Exempt Action on Regulations for Mobile Dental Clinics.

Ms. Reen noted that the Board's adoption of this action will conform the provisions of 18VAC60-21-430 to changes made in the Code. Dr. Wyman's motion to adopt this action was seconded and passed.

Respond to Petition for Rulemaking. Ms. Reen said the petition, which was supported by the comments posted on the Town Hall, is to change the requirement in 18VAC60-21-30.C of the Regulations Governing Dental Practice so that DEA permits do not have to be posted in a conspicuous location as currently required. The petitioner's goal is to decrease the opportunity for individuals to easily obtain a dentist's DEA number and use it to create fraudulent prescriptions. Ms. Reen proposed amending the language to be consistent with the Federal requirement that DEA registrations be maintained in a "readily retrievable manner at each practice location". Ms. Ridout's motion to amend the regulations as proposed was seconded and adopted.

**BOARD DISCUSSION/
ACTION**

Guidance Document 60-5, Auditing Continuing Education. Ms. Reen explained the document was discussed and revised at the Board's June 10, 2016 meeting but there was no motion to adopt it as revised. Dr. Wyman moved to adopt the revised document. The motion was seconded and adopted.

Guidance Document 60-15, Standards for Professional Conduct. Ms. Reen explained that an amendment is needed to be consistent with the current regulatory requirement for maintaining patient records for not less than 6 years. The proposed amendment changes the wording from “three (3)” to “six (6)” years.

Dr. Alexander questioned the bullet on posting information concerning the time frame for record retention and destruction in the patient receiving area and asked if this should be included. Ms. Reen said there are no regulations requiring this. She explained that the information in this document was provided by the Board to address best practices as well as regulatory requirements. She said this was included as a best practice rather than a legal requirement and as such cannot be enforced. Dr. Wyman moved to strike the paragraph and the motion was seconded and passed. The revised guidance document was adopted by consensus.

Guidance Document 60-17, Recovery of Disciplinary Costs. Ms. Reen reported that this document is updated annually to adjust the costs to be assessed to reflect the actual expenses incurred in the last fiscal year. Dr. Watkins moved to adopt the revision. The motion was seconded and passed.

**REPORT ON CASE
ACTIVITY:**

Ms. Palmatier reported that from May 25, 2016 through August 25, 2016, the Board received 90 cases and closed 155. She said, in the fourth quarter of FY 2016:

- A total of 65 patient care cases were received and 66 patient care cases were closed for a 102% clearance rate;
- The current pending caseload older than 250 days is 29% and the Board’s goal is 20%;
- 75% of the patient care cases were closed within 250 days and the Board’s goal is 90%.

She added that one dental hygiene license had recently been mandatorily suspended.

Ms. Palmatier explained there has been an increase in the number of requests made by respondents to be allowed to take Board Ordered courses online and reported these requests are consistently denied on the basis that the requirement for face-to-face, interactive sessions is part of the sanction.

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

Ms. Reen noted the comments she submitted on behalf of the Board in response to the ADA’s most recent request for comments on its sedation & anesthesia guidelines were provided as information and no action is required.

Ms. Reen noted that the regulatory proposal for a periodic law exam was withdrawn by the Board in March in response to the opposition of its licensees. She requested discussion of the alternatives recommended in the comments received on the proposal as better strategies to effectively communicate with licensees. She noted that some of the suggestions are already in place but apparently are not effective. The Board discussed various alternatives such as requiring completion of a course at license renewal, increasing the number of BRIEFS issued per year, addressing case issues and actions in BRIEFS, including a brief law exam during the online renewal process and requiring applicants for licensure and reinstatement, and disciplinary case respondents to take a law exam. It was agreed by consensus that:

- Ms. Ridout and Ms. Reen will develop a proposal for convening a focus group of recent licensees to discuss effective communication strategies.
- Dr. Parris-Wilkins and Ms. Reen will address the content in BRIEFS and add a third issue each year.
- Ms. Reen and Ms. Palmatier will explore creating a Facebook page for the Board.

Ms. Reen reviewed the following questions and concerns identified by licensees regarding implementation of the four chapters of regulations that went into effect on December 2, 2015:

- Is displaying the wallet license acceptable?
- Objections to displaying DEA permits which the Board addressed earlier in this meeting.
- The volunteer exemption for posting a license should be included in the regulations.
- The use of the term “non-surgical laser” needs to be removed/replaced as there is no such thing.
- Within the delegation to hygienists, the term “gingival curettage” should be removed as it is not a CDT billable procedure.
- An inconsistency between the regulations (18VAC60-21-140 & 18VAC60-25-40) addressing delegation to dental hygienists and the regulations (18VAC60-21-291 & 18VAC60-21-301) regarding the treatment team for conscious/moderate sedation and information in Guidance Document 60-4 needs to be addressed.

Dr. Rizkalla assigned these matters to the Regulatory/Legislative Committee for discussion.

ELECTION OF OFFICERS:

Dr. Rizkalla reviewed the Nominating Committee minutes from June 10, 2016 and asked for any additional nominations. There were no other nominations and the following officers were elected by acclamation:

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- Dr. Rizkalla as President
- Dr. Alexander as Vice-President, and
- Dr. Parris-Wilkins as Secretary-Treasurer.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:18 p.m.

Al Rizkalla, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date