

**VIRGINIA BOARD OF DENTISTRY
MINUTES
September 11, 2009**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:10 A.M. on September 11, 2009 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Meera A. Gokli, D.D.S., President

BOARD MEMBERS PRESENT: Jacqueline G. Pace, R.D.H., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Robert B. Hall, Jr. D.D.S.
Myra Howard, Citizen Member
Misty Mesimer, R.D.H.
Augustus A. Petticolas, Jr. D.D.S.
Paul N. Zimmet, D.D.S.

BOARD MEMBERS ABSENT: Jeffrey Levin, D.D.S., Vice President

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Emily Wingfield, Deputy Director for the Agency
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With nine members of the Board present, a quorum was established.

Dr. Gokli welcomed and introduced two new Board members, Dr. Boyd and Dr. Cutright.

PUBLIC COMMENT: **Ralph L. Howell, D.D.S.**, president of the Virginia Dental Association (VDA), noted that the members of the VDA Board of Directors attended the meeting to see how the Board works. He thanked the board members for the hard work they are doing and stated that the VDA is here to support the Board.

Michele Satterlund of the Virginia Association of Nurse Anesthetists asked the Board to be aware that 65% of all

anesthesias administered in Virginia are administered by nurse anesthetists.

APPROVAL OF MINUTES:

Dr. Gokli asked if the Board members had reviewed the minutes in the agenda package. Dr. Petticolas asked that the minutes for June 11, 2009 be amended to show that he was recused from participation in the first formal hearing. He then moved to accept the minutes of the June 11, 2009 meeting as amended and the June 12, 2009 meeting as presented. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

DHP Performs. Ms. Wingfield reported that the Board is doing very well in regard to performance measures and thanked the Board members for their continued efforts. She then noted that the number of complaints being received is down so DHP will be taking steps to increase public awareness. She invited any suggestions for improving the disciplinary process.

Ms. Wingfield advised that effective July 1, 2009 the impairment program for practitioners was renamed and restructured. She stated that one significant change in the new Health Practitioner Monitoring Program (HPMP) is that respondents need to have a current license to be in the program. In response to a question she indicated that summary action taken by a board would not result in dismissal but that a final order of suspension or revocation would.

Ms. Reen noted that the Board has asked about having a presentation by HPMP at its December meeting. Ms. Wingfield suggested contacting Peggy Wood, Monitoring Program Manager, to schedule the presentation.

Ms. Wingfield said that DHP is not experiencing the effects of the budget shortfalls such as layoffs like many state agencies and acknowledged that Board members were directly affected by the decision to withhold per diems.

VCU SCHOOL OF DENTISTRY :

Ron Hunt, D.D.S., Dean – R. Hunt thanked the Board for the opportunity to provide an update on the school and gave a presentation on “Change & Innovation in Dental Education at VCU.” The topics addressed were:

- Clinical Simulation
- Student-friendly Culture
- Assessment Methods – competency based

- Clinical Curriculum Enhancement – buddy system
- VCU' s Preceptorships in Public Health Clinic – students will be sent out to public clinics for 30 days
- Preceptorship Program – for 4th year dental & dental hygiene students
- Electronic Dental Record – will comes in November 2009
- Digital Radiography
- Continuing Education Offices – ADA Cerp – AGD PACE

Dr. Hunt thanked the Board for their continuing support of the school. Dr. Gokli commented that the program is very impressive and thanked Dr. Hunt for the presentation.

REPORTS:

Board of Health Professions (BHP), Dr. Zimmet said that Ms. Wingfield covered most of the topics addressed by BHP and added that the BHP is studying the practice of polysomnographers for possible licensure. Ms. Wingfield added that a legislative proposal is not being advanced at this time.

AADE. Dr. Gokli reported that the travel request for attendance at the annual meeting in Hawaii was denied so the Board will not be sending anyone. In response to questions, she added that she had sent an appeal to Ms. Ryals, DHP Director, and that the reasons for the denial were the Board's projected deficit and the Governor's directive on curtailing travel.

SRTA. Dr. Gokli reported that she attended the 34th SRTA annual meeting with Ms. Pace in Biloxi, Mississippi. She stated that SRTA continues to operate in the black has elected a new President, Dr. Tommy Dixon from South Carolina. She indicated that a uniform national exam will be the topic of a meeting to be held in Hawaii. She went on to say that the testing agencies are aligning in competing groups to address this issue. She asked Ms. Pace to talk about the work on the dental hygiene exam.

Ms. Pace reported that "Mobility" was the theme for efforts underway to align the dental hygiene exams given by SRTA and NERB. She went on to note that major changes to both exams were proposed and that SRTA's Board of Directors approved the changes for the 2010 exam cycle and that NERB is expected to act on the proposals at its next meeting.

Executive Committee Meeting. Dr. Gokli reported that the Executive Committee met yesterday and addressed the following issues:

- Amendment of Article III of the Bylaws to reference the Code of Conduct adopted at the June meeting - She requested a motion to amend the Bylaws as proposed. Dr. Hall moved to adopt the amendment. The motion was seconded and passed.
- Recovery of Disciplinary Costs (House Bill No. 2058) - She reported that the NOIRA for these regulations was still under administrative review.
- Standards for Professional Code of Conduct - Dr. Gokli stated that a proposed guidance document will be presented to the Board in December.
- Revenue and Expenditures - Dr. Gokli commented that given the FY09 positive cash balance the Board does not need to work on fee increases at this time and that the Committee will be monitoring budget reports in preparation for addressing the need in the future.

Regulatory/Legislative Committee. Ms. Howard reported that Dr. Levin could not attend this meeting so she would go over the following issues that the Committee addressed in August 2009:

- Dental Assistant Regulations – She reported the proposed regulations are still in administrative review.
- Registration of Mobile Clinics – She stated these regs are also still in administrative review in the Secretary's office. Ms. Yeatts noted they had just moved to the Governor's office.
- Chart on permissible Delegation of Duties – Ms. Howard reported the Committee is developing this chart for release with Dental Assistant II regulations and will be sent out for public comment before it is presented to the Board.
- Draft Guidance Document on Administering and Monitoring – She advised that the Board is recommending the document for adoption as an action item later on the agenda.
- Periodic Review Regulations – She reported the Committee's internal review for identification of possible changes is in progress with a markup of changes to be considered in Parts I, II and III completed and review of Part IV now underway.

Nominating Committee. Ms. Pace reported that the Nominating Committee met yesterday and proposes the

following slate of officers for election as an action item later in the agenda:

Jeffrey Levin, DDS – President

Jacqueline G. Pace, RDH – Vice President, and

Robert B. Hall, Jr., DDS – Secretary/Treasurer.

LEGISLATIVE AND REGULATION:

Petition for Rule-making – Robert J. Haddad. Ms. Yeatts reported that the Board received several public comments. She went on to note that there are 3 requests in the petition that the Board needs to look at individually. She asked the Board to give the rationale for the responses to be given. Dr. Gokli agreed to going over each request and to vote.

- Request # 1 (Eliminate the distinction currently in regulation between conscious sedation & deep sedation) – Dr. Gokli commented that there is no scientific basis for the assumption that even if conscious sedation is the goal deep sedation is likely to result. Ms. Yeatts noted that the anesthesia regulations are currently in review and that addressing all substantive changes at one time would be advisable. Dr. Zimmet moved to deny this request. The motion was seconded and passed.
- Request # 2 (Institute a sedation/anesthesia permit and office inspection process) – Dr. Gokli noted that Oral and Maxillofacial Surgeons (OMS) already have this in place. Ms. Reen added that the Virginia Society of Oral and Maxillofacial Surgeons (VSOM) does peer reviews for its members but that not all OMS are members of the VSOM. Ms. Yeatts stated that the Board would need statutory authority to issue permit. Ms. Yeatts went on to say that most states do require registration. Ms. Howard moved to deny this request because the Board does not have statutory authority. The motion was seconded and passed.
- Request # 3 (establish an Anesthesia Review Committee to evaluate cases) – Mr. Casway stated that the Board uses special conference committees to review cases and further stated that a public forum on cases would likely violate confidentiality requirements. Ms. Howard moved to deny this request because the Board has a process in place for case reviews. The motion was seconded and passed.

Review of Regulatory Actions Chart. Ms. Yeatts reported that the regulations for:

- Registration of Dental Assistants II is still in the administrative review stage of the process.

- Mobile Dental Clinics is at the Governor's office, the stage before issuance for public comment.
- Disciplinary Action Cost Recovery is being reviewed at the Secretary's Office.

Dr. Lynch's Recommendation. Ms. Yeatts stated that Dr. Lynch has requested an amendment to our current law to allow dental hygienists to administer local anesthetic in the presence of a medical doctor if a dentist is not available. She commented that legislation would be needed and that the Board could not advance this request until work on the 2011 Session begins next year. Ms. Reen added that if the Board chooses not to pursue this issue, Dr. Lynch might work with his legislators. Dr. Zimmet moved to deny the request. The motion was seconded and passed.

Proposed Guidance Document on Administering and Monitoring. Ms. Reen reported that this document was requested by licensees following disciplinary action taken by the Board and it has gone through extensive drafting as well as discussions with Board of Nursing, Board of Pharmacy, Board of Medicine, the DHP Chief Deputy and Mr. Casway. Ms. Reen stated that this document reflects the current legal parameters for administration and is advanced by the Regulatory-Legislative Committee for adoption by the Board. Following discussion with members of the audience regarding the practice of nurses, Dr. Zimmet moved to adopt the Guidance Document. The motion was seconded and passed.

Amendment of the Proposed Dental Assistant II Regulation. Ms. Reen reported that she is requesting Board action to amend these regulations before they are released for public comment to comport with the decisions made by the Regulatory-Legislative Committee regarding the duties that might be delegated to DASII as listed in 18VAC60-20-230. She requested that:

- Performing pulp capping procedures be added to this section to limit performance of this duty to DASII, and
- The use of non-epinephrine retraction cord be stricken for the provision for taking final impressions and listed as a separate duty.

Dr. Hall moved to adopt the amendments. The motion was seconded and passed.

BOARD

DISCUSSION/ACTION:

Status of Public Comment. Dr. Gokli stated that this is a new item being added to the agenda so that the Board would have the opportunity to discuss any comment received at the

beginning of the meeting to determine if action is needed or if action is already underway. She then asked for any discussion of the public comment received at the beginning of the meeting. It was agreed by consensus that no action was needed.

ADA Letter on Clinical Licensing Examinations. Ms. Reen advised that this information was provided to assist the board members who are participating in testing to follow the ongoing discussions of clinical examinations.

Summary Action. Mr. Casway discussed the legal considerations and the circumstances that must be addressed when summary action is considered. He cautioned that the decision to take summary action cannot be made based solely on prior bad acts, that present circumstances must be considered, and that the respondent, must at the time the decision is considered, pose a danger to the public health and safety which is supported by clear and convincing evidence. Ms. Reen went over the process for advancing a case for summary action and explained that the decision regarding the action to be taken rests solely with the Board. The respondent's participation in the Health Practitioner's Monitoring Program was also discussed as an important consideration of present danger. Mr. Casway concluded by saying that when a respondent is not in practice it would be difficult to prove substantial danger in most cases.

Auditing CE for Compliance. Ms. Pace proposed that the Board begin periodic auditing of licensees using random samples for checking compliance with continuing education requirements. Ms. Wingfield commented that Dr. Carter with the Board of Health Professions could assist in identifying a statistically relevant sample and further that several boards have programs that could be used to develop a process. Ms. Reen noted that presently the Board only checks CE when licensees appear before a special conference committee. Following discussion, no action was taken.

VDH Inquiry about General Supervision. Ms. Reen requested guidance on the response to be given regarding the Virginia Department of Health's (VDH) inquiry about dental hygiene practice under general supervision. The inquiry was, when a dentist has ordered placement of sealants under general supervision, is a dental hygienist permitted, in the ten month period following the order, to see the patient and place the sealants and then to see the

patient subsequently to assess sealant loss and reapply sealants based on the dental hygienist's assessment. The Board was advised that under current law dental hygienists are not permitted to make a final diagnosis or treatment plan; and further, that one of the requirements for general supervision is that the time frame for performance of treatment is to be specified in the order. She then read a proposed response which explained that the dentist would need to expressly authorize multiple treatments and to establish the time period for each of the treatments to authorize the dental hygienist to see and treat the patient. Discussion of known practices regarding general supervision and concern over the risk of sealing over emergent decay followed.

Ms. Reen read her proposed response again.

Dr. Petticolas moved to adopt the response proposed by Ms. Reen. The motion was seconded and passed by voice vote. A roll call vote was requested. The motion passed with six members voting in favor – Dr. Cutright, Dr. Gokli, Dr. Hall, Ms. Howard, Dr. Petticolas and Dr. Zimmet and three members voting against – Dr. Boyd, Ms. Mesimer and Ms. Pace.

Election of Officers. Dr. Gokli called for the election of officers. Dr. Zimmet moved to elect the nominees as reported by Ms. Pace -

Dr. Levin as president, Ms. Pace as vice president, and Dr. Hall as secretary/treasurer.

The motion was seconded and passed. Dr. Gokli congratulated the new officers and expressed her appreciation for the opportunity to lead the Board as president.

REPORT ON CASE ACTIVITY:

Mr. Heaberlin reviewed his report on the status of the 171 open cases as of September 9, 2009. He noted that only 3% of the pending caseload is older than 250 business days. He went on to say that from July 1, 2009 to September 9, 2009, the Board received 65 cases from Enforcement and has closed 85 cases for a 130% closure rate. He thanked the Board for all their hard work. He added information on the changes in the HPMP to that noted earlier by Ms. Wingfield, saying that respondents who are revoked or suspended while enrolled in HPMP will be reviewed on a case by case basis and most likely decided following the Board's formal hearing.

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

New Member Orientation. Ms. Reen reported that the orientation for Dr. Cutright and Dr. Boyd was held in August.

Dental Hygiene Practice in Virginia Department of Health. Ms. Reen reported on the implementation of the pilot program and the protocol for dental hygienists to provide preventative dental care under the "remote supervision" of a public health dentist in three health districts.

ADEA Statement on Professionalism in Dental Education. Ms. Reen showed the Board the pamphlet from ADEA and noted the six values-based statements defining professionalism in dental education - competence, fairness, integrity, responsibility, respect and service-mindedness. She made copies available for pick up.

**BOARD COUNSEL
REPORT:**

Jeffrey R. Leidy, D.M.D. v. Virginia Board of Dentistry. Mr. Casway stated the only court case pending against the Board is the one in which Dr. Jeffrey Leidy seeks to vacate a Consent Order. Mr. Casway advised that he has requested an agreement to non-suit the matter.

**CONSIDERATION
OF SUMMARY
RESTRICTION:**

Gordon J. Miniclier, DDS, case no. 126388. The Board received information from William Clay Garrett, Assistant Attorney General regarding the evidence and the allegations in Dr. Miniclier's case. Mr. Garrett concluded by asking the Board to summarily restrict Dr. Mimiclier's prescribing authority to make it unlawful for him to prescribe, administer, or dispense Schedule II, III, IV, and V controlled substances.

Closed Meeting:

Ms. Pace moved that the Board enter into a closed meeting pursuant to §2.2-3711(A) (27) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Dr. Miniclier. Additionally, it was moved that Board staff, Sandy Reen, Huong Vu, Alan Heaberlin and Board counsel, Howard Casway 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:

Ms. Pace 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. Zimmet moved that the Board find that Dr. Miniclier's practice of dentistry does constitute a substantial danger to the public health and safety and to summarily restrict him from prescribing schedule II through V controlled substances. The motion was seconded and passed.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 1:00 p.m.

Jeffrey Levin, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date