

**VIRGINIA BOARD OF DENTISTRY
MINUTES
June 13, 2014**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:02 a.m. on June 13, 2014, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, Virginia 23233.

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

**BOARD MEMBERS
PRESENT:**

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

**BOARD MEMBERS
ABSENT:**

Myra Howard, Citizen Member

STAFF PRESENT:

Sandra K. Reen, Executive Director for the Board
Elaine J. Yeatts, DHP Senior Policy Analyst
Kelley Palmatier, Deputy Executive Director for the Board
Huong Vu, Operations Manager for the Board

OTHERS PRESENT:

David E. Brown, D.C., DHP Director
James E. Rutkowski, Assistant Attorney General

**ESTABLISHMENT OF
A QUORUM:**

With nine members of the Board present, a quorum was established.

**DHP DIRECTOR'S
REPORT:**

Dr. Brown reported the followings:

- Ms. Jamie Hoyle is the new Chief Deputy Director for DHP;
- Agency wide staff training was held in May;
- New Board members training is scheduled for September
- Virginia is participating in the National Governors' Association activities to recognize military credentialing in state licensing policies; and

- Legislation requiring all prescribers, including dentists, to register with the Prescription Monitoring Program (PMP) was passed

Dr. Brown concluded by thanking Dr. Levin for his eight years of service on the Board.

PUBLIC COMMENT:

Dr. Levin explained the purpose of the public comment period then asked for comments.

Dr. Jack Mrazik, of the Virginia Society of Oral Maxillofacial Surgeons, encouraged demonstration of emergency preparedness in the sedation/anesthesia permit holder office inspections. He added that the people who conduct the inspection should be trained anesthesia clinicians who know the proper use of emergency equipment.

Dr. John Unkel, a pediatric dentist, asked the Board to consider exempting permit holders who only practice/administer in JACHO accredited facilities from inspection by the Board.

Dr. Patricia Wunsch, President of the Virginia Society of Pediatric Dentistry, asked who will conduct the sedation inspections and commented that in MD and NC office inspections are completed by pediatric dentists. She requested that inspections focus on administration of sedation.

Ralston King, of the VA Dental Hygienists' Association, commented that the VDHA supports the practice of billing for periodic exams performed by dental hygienists.

Dr. William Bennett, Chairman, VDA Ethics & Judicial Affairs Committee, stated that he appreciates the Board's current efforts to address ethical behavior and professionalism. He encouraged the Board to be a better member in the organized dentistry community's efforts to promote ethical behavior before harm occurs.

**APPROVAL OF
MINUTES:**

Dr. Levin asked for possible approval of the minutes in a block, as listed on the agenda. Dr. Watkins moved to accept the minutes as published. The motion was seconded and passed.

**LIAISON/COMMITTEE
REPORTS:**

Board of Health Professions (BHP). Dr. Levin said that he did not attend the last meeting, and noted that mid-level providers are being reviewed.

AADB. Dr. Levin stated that he and Ms. Palmatier attended the AADB Mid-Year meeting in April. He said information from the meeting is available on the AADB website. He noted that AADB meets twice a year and he hoped that the Board will continue to attend the meetings.

Ms. Palmatier stated that her report is included in the agenda materials and added that the discussion of the pending NC Supreme Court case was very interesting.

ADEX. Dr. Rolon reported that the ADEX exam is now merged with the SRTA exam. She added that the next meeting is in November, 2014, in Chicago.

SRTA. Dr. Watkins commented that many of SRTA's exam features have been incorporated in the ADEX exam. He had no other information to report.

Ms. Swecker reported that the ADEX exam for dental hygienists will be the traditional SRTA exam. She added that she is going to the SRTA Annual meeting in August, 2014.

Dr. Watkins noted that NERB is asking SRTA examiners to examine for NERB. Ms. Reen suggested adding this matter as a business item for the September, 2014, business meeting. All agreed.

Regulatory-Legislative Committee. Dr. Levin stated that the Committee's May 2, 2014, minutes are in the agenda materials and the Committee's recommendations will be addressed later in the meeting.

LEGISLATION AND REGULATIONS:

Status Report on Regulatory Actions. Ms. Yeatts reported that the Periodic Review to reorganize Chapter 20 into four new chapters: 15, 21, 25 and 30, is in the final stages of review at the Secretary's Office. She said she anticipates things will move quickly.

Draft Legislation on Fee-Splitting. Ms. Yeatts stated that the draft legislation is proposed by the Regulatory-Legislative Committee to address concerns advanced through public comment about fee splitting by dentists with third parties. She also presented an edited version for the Board's consideration.

Dr. Gaskins moved to advance the edited version of the legislative proposals. The motion was seconded and passed.

Adoption of Guidance Document - Implementation of Periodic Office Inspections. Ms. Reen reported that the Regulatory-Legislative Committee advanced the draft document for Board consideration and action. She noted that subsequent to the Committee's action, she has revised the document in response to questions raised by licensees and recommendations made by staff in the Enforcement Division. She asked the Board to consider the revised version and said if there were any questions about the changes she made, action on the document could be deferred to the September meeting.

Ms. Swecker asked if it is appropriate to exempt inspections of permit holders who administer in hospitals accredited by JACHO. Ms. Reen said that it could be considered.

Dr. Dhakar asked the Board to announce inspections as is done for oral and maxillofacial surgeons. Ms. Reen said that the Board's interests and inspection resources are different from those of AAOMS, which is a membership organization. Ms. Yeatts explained that unannounced inspections are a statewide policy in keeping with the state's interest in promoting a culture of compliance.

Dr. Wyman asked if there is a mechanism to address VASOMS recommendation for demonstration of emergency preparedness. Ms. Yeatts suggested having Ms. Reen discuss the Board's interest in adding demonstration scenarios with the Enforcement Division. All agreed.

Ms. Reen noted that she is working with the Data Division to track the inspections of offices so that each office is inspected once in the three year cycle.

Dr. Levin asked that the Enforcement Division be asked to address its inspection practices at the Board September meeting. All agreed.

Dr. Wyman moved to accept the Committee's recommendation to accept the draft document with Ms. Reen's revisions, and to exempt JACHO accredited hospitals from inspection. The motion was seconded and passed.

BOARD

DISCUSSION/ACTION:

Review of Public Comment Topics. Ms. Reen noted that the comments received were:

- three (3) concerns about periodic office inspections which were addressed in the discussion of the guidance document,

- VDHA's support for billing for periodic exams performed by dental hygienists under general supervision, which will be addressed later in the agenda, and
- the request that the Board be a better partner with the VDA and the School of Dentistry in addressing ethics.

Purpose and Development Process for Guidance Documents.

Ms. Reen said she wanted to review the purpose of guidance documents in light of the interest of Board members in developing them on a variety of subjects. She then reviewed the definition in the Code of Virginia and presented her recommendations for addressing development of new documents. By consensus, the Board agreed to follow Ms. Reen's recommendations.

Draft Guideline for Conscious/Moderate Sedation. Ms. Reen stated that Dr. Levin developed this document before the sedation and anesthesia permit regulations went into effect. She added that it was presented at the Board's March meeting and was deferred at the request of Ms. Tysinger, Board counsel, so a legal review might be completed. She then asked Mr. Rutkowski to address the review.

Mr. Rutkowski advised that the proposed guidance exceeds the scope of a guidance document which should be used to interpret or implement statutes or regulations.

Dr. Levin said that he developed this document because he was approached by many permit holders who asked for further clarification of the sedation regulations.

Following discussion, the Board agreed by consensus to table this proposal.

Draft on Recordkeeping for Endodontic Root Canal Treatment.

Ms. Reen stated that Dr. Gaskins developed this proposal to address the inadequate recordkeeping for root canal treatment that he is seeing in numerous disciplinary cases. She added that it was presented at the May 2, 2014 Regulatory-Legislative Committee meeting for discussion, and the Committee forwarded the draft to the Board for consideration. She provided the recordkeeping information available in the Guide to Clinical Endodontics from the American Association of Endodontists for review by the Board.

Dr. Gaskins stated that his draft was reviewed by seven (7) board certified endodontists who reviewed his proposal.

Ms. Reen noted that currently there are no legal provisions addressing recordkeeping for specialty practices, and that

enforceable requirements can only be established by law or by regulation. She then asked for consideration of the implications of adopting this proposal. Mr. Rutkowski supported Ms. Reen's request.

Dr. Watkins moved to table this matter. The motion was seconded and passed.

Billing for a Periodic Exam Performed by a Dental Hygienist.

Ms. Reen said that Dr. Watkins is requesting discussion of the Board's position on the practice of billing for periodic exams performed by dental hygienists and consideration of developing a guidance document on the subject.

Dr. Watkins said this issue came up during a probable cause review when Board staff told him that such billing is permitted. He asked the Board to provide guidance on this because it is not clear whether such billing is, or isn't, permitted. After discussion, Dr. Levin suggested the matter be referred to the Regulatory-Legislative Committee. All agreed.

Changing the Education Requirement for Dental Licensure.

Ms. Reen stated that Dr. Wyman is requesting discussion on amending 18VAC60-20-60(A) which addresses the educational requirements for dentists.

Dr. Wyman stated that he is concerned about foreign trained dentists being licensed with only a 12 month Advance General Dentistry (AGD) accredited program. He felt that the 12 month program is inadequate. He added that the minimum post-doctoral dental specialty program is two (2) years. He moved to change the requirement of post-doctoral AGD programs from 12 months to 24 months. The motion was seconded.

Dr. Watkins asked if there was data supporting Dr. Wyman's position. Ms. Reen responded that this question had been researched for a prior meeting and the numbers at that time were that only one of about 200 individuals licensed by advanced training had received disciplinary action.

After discussion, Dr. Levin said he would like to refer this matter to the Regulatory-Legislative Committee for further research. Dr. Wyman withdrew his motion. All agreed to referral to the Committee.

Electronic Dental Records. Dr. Rizkalla stated concern about the impact computerized data entry can have on the quality and safety

of patient care. He added that cases heard indicate that clinical notes can be altered at any time after the date the patient was seen. He proposed that the Board investigate its role to safeguard patient care. He suggested the Board research the types of software and templates used in dentistry to learn how information can be altered. Dr. Levin assigned this subject to the Regulatory-Legislative Committee.

Dr. Gaskins presented a background summary of electronic records veracity concerns; then presented a resolution proposing that the Board send to Dr. Brown a request that DHP expand its investigations capacity to include a forensics IT/"expert witness" specialist(s). Ms. Reen commented that Dr. Brown has identified electronic records to be a concern. She said it is appropriate and timely for the Board to convey its interest in having the ability to investigate the integrity of electronic records. The resolution was seconded and passed.

**REPORT ON CASE
ACTIVITY:**

Ms. Palmatier reported on the Board's disciplinary case statistics, noting that for the third quarter of FY2014, the Board received 84 cases and closed 65 cases for a 77% clearance rate; which is down from 127% from last quarter. She noted that two dentists and two hygienists were summarily suspended, and one dentist was summarily restricted between February 23 and May 28, 2014.

Ms. Palmatier cited multiple reasons for the decline in numbers in the third quarter and asked Board members to be diligent about reviewing the entire file and filling out the probable cause review form accurately and completely.

Ms. Palmatier requested guidance on whether the Board would like to add a requirement for respondents to report to the Prescription Monitoring Program the dispensing of Schedule II-IV substances when the facts of a case warrant such a sanction.

Dr. Gaskins moved to include this sanction in Board orders as suggested by Ms. Palmatier. The motion was seconded and passed.

Ms. Palmatier stated that respondents and their attorneys have asked the Board to reconsider its practice of placing respondents on "indefinite probation", when only completion of continuing education, passage of the Board's Dental Law Exam, or unannounced inspections are imposed. By reports, Respondents are experiencing problems with maintaining malpractice insurance when sanctioned for "indefinite probation"; even though these forms

of discipline do not restrict practice. Ms. Palmatier reported that other boards in DHP only impose indefinite probation when the terms imposed restrict a respondent's ability to practice.

Dr. Gaskins moved to not routinely impose indefinite probation when sanctions are limited to completing CE courses, passing the Board's Dental Law Exam, or requiring an unannounced inspection. The motion was seconded and passed.

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

Revised Inspection Form for Permit Holder Office Inspection.

Ms. Reen stated that the Regulatory-Legislative Committee recommended adoption of the inspection form with the addition of inspecting for emergency preparedness. She noted that the form meets the need of Enforcement and the content of the form is under review for adaption to an electronic format.

Dr. Wyman suggested deleting the education, recordkeeping, and environmental conditions sections from the form for permit inspections. Ms. Reen explained that the form as presented needed to be maintained even if a separate form is established for permit holder inspections. She said the Board has the authority to look at the whole environment in order to protect the public. She suggested adopting the form as presented, and then consider revising it, or establishing a separate form, when the review for an electronic format is finished.

Ms. Swain moved to adopt the form as presented. The motion was seconded and passed.

Practice Ownership. Ms. Reen stated that Ms. Hoyle, DHP Chief Deputy Executive Director, is assisting her in identifying the agencies and organizations to be represented on the regulatory advisory panel such as the State Corporation Commission, Commonwealth's Attorney, Department of Medical Assistance Services, Virginia Dental Association, and Medicaid Fraud Control Unit. She added that polling members to schedule the next Regulatory-Legislative Committee meeting before September has not been successful to date.

Dr. Wyman suggested that the Committee meet in the afternoon of the days the business meetings are held, to facilitate participation by all members. Ms. Reen said that this option can be explored. Discussion followed about facilitating the participation of Board members, scheduling formal hearings, balancing the work for

effectiveness, and having the Board address policy matters as part of its agenda, rather than use a committee. No action was taken.

Board Staff. Ms. Reen reported that

- recruiting is underway for a licensing manager,
- Dr. Charles Cuttino, a long term expert witness for the Board, has decided not to renew his contract, so she is looking for a replacement, and
- she is exploring the possibility of additional contracts for experts to assist with probable cause reviews.

2015 Proposed Calendar. Ms. Reen stated that the 2015 proposed calendar is presented for adoption by the Board. She suggested making the reserve dates into Committee meeting dates. By consensus, the Board adopted the calendar and accepted Ms. Reen's suggestion.

Guidance Documents. Ms. Reen explained that reviewing existing guidance documents to assure that those posted are current, is ongoing. She added that some of the documents are outdated, and she will have them removed from the webpage within the next two (2) weeks. She then reviewed with the Board the documents currently posted on the webpage; noting which may need to be removed or modified.

Nominating Committee. Dr. Watkins asked for appointment of the Nominating Committee. Discussion followed about when the Committee should be appointed, and who should make the appointments. Following consideration of the Bylaws, Dr. Levin asked anyone interested in serving on the Committee to let him know following adjournment.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:05 p.m.

Jeffrey Levin, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date