

**VIRGINIA BOARD OF DENTISTRY
MINUTES
September 18, 2015**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:05 a.m. on September 18, 2015, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, Virginia 23233.

PRESIDING: Melanie C. Swain, R.D.H., President

**BOARD MEMBERS
PRESENT:**

John M. Alexander, D.D.S.
Charles E. Gaskins, III, D.D.S.
Tonya A. Parris-Wilkins, D.D.S.
A. Rizkalla, D.D.S.
Evelyn M. Rolon, D.M.D.
Tammy K. Swecker, R.D.H.
James D. Watkins, D.D.S.
Bruce S. Wyman, D.M.D.

**BOARD MEMBERS
ABSENT:**

Sharon W. Barnes, 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:

James E. Rutkowski, Assistant Attorney General

**ESTABLISHMENT OF
A QUORUM:**

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

Ms. Reen read the emergency evacuation procedures.

Ms. Swain welcomed the new Board member, Dr. Parris-Wilkins, and thanked Board staff and Board counsel for their participation.

Ms. Swain gave greetings then explained the parameters for public comment and opened the public comment period.

PUBLIC COMMENT: **Dr. Robert Allen, DDS**, asked the Board who may own and operate dental practice in Virginia.

Chris Nolen of McGuire Woods, asked the Board what has changed since the last discussion of practice ownership and noted his clients' interest in participating in any discussion of this matter since it affects public policy on access to care.

Guy Rollings of Kool Smiles stated his agreement with Mr. Nolen's comments.

**APPROVAL OF
MINUTES:**

Ms. Swain asked if there are any corrections to the minutes as listed on the agenda. No corrections were offered and the minutes were adopted as presented.

**DHP DIRECTOR'S
REPORT:**

Dr. Brown was not present.

**LIAISON/COMMITTEE
REPORTS:**

Board of Health Professions (BHP). Dr. Watkins stated that he did not attend the last meeting and noted that the minutes are provided in the agenda package.

AADB. Ms. Swain stated that she had no report and added that Dr. Gaskins will attend the AADB Annual meeting in November, 2015.

ADEX. Dr. Rolon said she had no report. Dr. Rizkalla noted that SRTA is no longer administering the ADEX dental exam because it was not being accepted by some states and as a result SRTA had to issue refunds. He added the handling of a computer malfunction during a SRTA exam was acceptable to all parties involved except ADEX, which contributed to the decision for ADEX and SRTA to disassociate.

SRTA. Dr. Rizkalla reported that as of July 28, 2015, the SRTA exam is accepted in 32 states. He added that SRTA is concerned that Maryland, North Carolina and District of Columbia do not accept the SRTA exam.

Ms. Swecker reported the Dental Hygiene Committee has modified many areas of the exam and noted Virginia dental education programs receive SRTA scores automatically because the Board is a member of SRTA. Moving forward, this may be a concern as SRTA is no longer administering the ADEX exam.

Dr. Watkins stated the Dental Committee met after the annual meeting to rewrite the exam due to the split with ADEX and a meeting is being planned. He added Mississippi and Kentucky are no longer members of SRTA, but the Kentucky Board is amending their statute so they can accept the SRTA exam.

LEGISLATION AND REGULATIONS:

Status Report on Regulatory Actions. Ms. Yeatts reported:

- The Periodic Review to reorganize Chapter 20 into four chapters has been at the Governor's office for approval to publish as final regulations for more than 261 days;
- The NOIRA for a law exam is pending approval by the Governor to publish for public comment;
- The proposal to accept education programs accredited by the Commission on Dental Accreditation of Canada is moving forward as a fast track action; and
- The proposal to require capnography equipment for monitoring anesthesia or sedation as a fast track action was deemed not appropriate by the Department of Budget and Planning (DPB). This proposal was resubmitted as a NOIRA and is at DPB for review.

One Time Renewal Fee Decrease. Ms. Yeatts explained that the Board is required by law to adjust fees so the revenue and expenditures are not more than 10% apart. She referenced the analysis and recommended reductions provided by the DHP Budget Manager. She requested adoption of the proposed reductions in order to have the reductions in effect for the 2016 renewal notices. Dr. Watkins moved to adopt the recommended regulations for a one-time fee reduction as presented. The motion was seconded and passed.

Response to Petition for Rulemaking from Dr. Dickinson. Ms. Yeatts stated the petition asks the Board to adopt the ADA's Principles of Ethics and Code of Professional Conduct (ADA Code). She said the Board may accept the petitioner's request for amendments to regulations and initiate rulemaking by adoption of a NOIRA, or the Board may reject it and state its reasons for denying the petition. She presented a chart showing that many of the ADA Code provisions are addressed in the Code of Virginia, both in current regulations, and in the proposed chapters of regulations which are at the Governor's office for approval to publish as final regulations. She cautioned against adopting the ADA Code by reference because the Board then would be bound to adhere to any changes made by the ADA without the ability to address changes through Virginia's regulatory process.

Mr. Rutkowski advised the Board to reject the petition because some of the standards in the ADA Code are not enforceable and others have already been addressed. Discussion followed about the pros and cons of incorporating the ADA Code in regulations. The idea that the Board could adopt it and selectively enforce the provisions was discussed, but not advanced. Following discussion, Dr. Watkins moved to deny Dr. Dickinson's petition because most of the standards in the ADA Code are addressed in current or proposed regulations and some of the standards in the ADA Code, such as participation in professional societies, are not appropriate grounds for disciplinary action. The motion was seconded and passed.

BOARD

DISCUSSION/ACTION:

Review of Public Comment Topics. Ms. Swain noted that members of the audience had commented on the topic of practice ownership; then she asked for Board discussion. Ms. Reen said there was also written comment from Dr. Allen about practice ownership. She reported that she had provided the current laws and regulations to Dr. Allen and he is possibly was not satisfied with the information. She added that she will address this topic for the Regulatory-Legislative Committee on October 16, 2015, by reviewing her communications with the State Corporation Commission, Department of Medical Assistance Services and the Office of the Attorney General. Dr. Wyman moved to provide an update on the status of practice ownership in the next edition of "BRIEFS". The motion was seconded and passed.

Written Comments from Dr. Saxen and Dr. Wong addressed their concerns about the effect that office inspections for the administration of sedation have on traveling dental anesthesiologists and asked for consideration of allowing an exemption for dental anesthesiologists to have peer review. It was noted that dental anesthesiology is not a recognized specialty and there is no certifying board recognized by the ADA. By consensus, the Board agreed to send letters of acknowledgement to both commenters.

Policy Strategies on Teledentistry. Ms. Reen stated that the minutes and transcript of the Open Forum on Teledentistry are included in the agenda for discussion of the next steps to be taken. During discussion the following policy considerations were noted:

- The hands-on nature of dentistry needs to be reflected;
- Requiring state licensure;
- Cyber security and the use of smart phones; and
- Using teledentistry to address the supervision of dental hygienists in order to address public health needs.

By consensus, it was agreed to refer this matter to the Regulatory-Legislative Committee.

CDCA Letter. Ms. Swecker asked the Board to consider requiring a clinical examination similar to Ohio's for dental assistants II. By consensus, the Board agreed to refer this matter to the Regulatory-Legislative Committee.

**BOARD COUNSEL
REPORT:**

Mr. Rutkowski reminded Board members that they:

- must not "reply to all" when responding to group e-mails because doing so constitutes a meeting;
- do not speak for the Board and should refer inquiries to the executive director; and
- must not engage witnesses or other board members in a debate during hearings.

**REPORT ON CASE
ACTIVITY:**

Ms. Palmatier stated that from January 1, 2015, through September 11, 2015, 451 cases were received and 488 cases were completed. She noted that 69 patient care cases were received and 66 cases were closed achieving a 96% clearance rate for the fourth quarter, which is down from 105% in the third quarter; the pending caseload older than 250 days was 24%; and 66% of cases were closed within 250 days. She added that the license of one dentist had recently been mandatorily suspended. She also reported that Board staff, with Dr. Levitin, has read about 70 C and D cases, which will help with the backlog. She expects the numbers for the first quarter of 2016 to be higher.

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

Ms. Reen reported:

- The proposal advanced by the Ad Hoc Committee on Disciplinary Findings to amend the Sanction Reference Points guidance document to add a financial gain factor to the offense scoring tables will be presented at the December meeting. She added that Mr. Kauder of Visual Research has evaluated the effect of adding this offense and will present his findings at the Board's December meeting.
- There were several misstatements about the work of the Board in the VDA President's Message in the latest Virginia Dental Journal. The misstatements were:
 1. *Only 3 – 5% of licensees violate the laws and regulations for dentistry.* She said that in the last five years 8,358 dentists have held an active dental license and 1,472 of those dentists have had at least one case before the Board. This means that 17.6% of

the dentists licensed in this five year snapshot were or are currently being investigated by the Board for possible violations of the laws and regulations which govern dental practice in Virginia.

2. *The Board only communicates to interested third parties about changes.* The Board's Public Participation e-mail list of 167 individuals and organizations includes numerous dentists and dental organizations. BRIEFS which addresses the policy actions of the Board is sent to every licensee with an email address on record.
3. *The Board used to publish a quarterly newsletter.* Looking back to 1988, the records indicate that a year or more passed between bulletins until 2010. Beginning in 2010, BRIEFS has been issued twice a year with the exception that only one was issued in 2014.

She also noted that Dr. Link encouraged VDA members to contact Board members to address their issues. Ms. Reen said that Board members are public officials who can hear comments from the public, but she went on to caution that questions should be referred to her since she is the spokesperson for the Board.

- Ms. Reen asked the Board to consider using agency subordinates to hear cases when two board members are not available to convene a Special Conference Committee. She added that the case decisions made by the agency subordinate must be ratified by the Board at the next Board meeting. Ms. Yeatts stated that §54.1-2400 of the Code of Virginia grants the Board the authority to delegate to a qualified agency subordinate the authority to conduct informal fact-finding proceedings. She also noted that the Board has a regulation which allows the Board to delegate selection of an agency subordinate to its executive director. Dr. Rizkalla moved to authorize the Executive Director to designate an agency subordinate to conduct informal hearings as needed. The motion was seconded and passed.
- **Regulatory-Legislative Committee will meet on 10/16/2015.** Ms. Reen stated that the Committee will meet at 9 a.m. and all Board members are welcome to attend.

- **Guidance Document 60-17 Recovery of Disciplinary Costs.** Ms. Reen stated that the Board revisits this every year to reflect the current costs for investigation and compliance. She asked the Board to adopt the proposed revisions as presented. Dr. Watkins moved to adopt the proposed revisions. The motion was seconded and passed.
- **Proposed Guidance Document.** Ms. Reen stated that the Regulatory-Legislative Committee asked Board staff to create a guidance document to help permit holders better understand sedation/anesthesia regulations. She noted that the questions in the proposed guidance document are frequently asked to the Board, and that the answers provided were crafted by Ms. Reen after research of the current laws and regulations. Dr. Wyman moved to adopt the proposed guidance document as presented. The motion was seconded and passed.

Comments Submitted to CDEL. Ms. Reen stated a copy of the letter is provided as information only, no action needed.

Guidance on Addressing Noncompliance with Dispensing Requirements. Ms. Reen asked the Board how to address licensees' noncompliance with the Prescription Monitoring Programs' (PMP) requirements to report dispensing of controlled substances. She stated every dentist with an active license must either report their dispensing of controlled substances to PMP, or apply for a waiver. She explained Board staff has worked with the PMP and the IT division to send multiple notices about the requirements, and the final notice was sent on August 19, 2015, with a September 7th deadline to come into compliance. She asked for guidance on addressing the lack of responses by an estimated 300 licensees, and for addressing registered dentists who fail to submit required weekly reports. She noted that an advisory letter could not be utilized because these dentists are already out of compliance. She added that Confidential Consent Agreements (CCA) and Prehearing Consent Orders (PHCO) are options the Board could consider. Dr. Watkins moved to offer a CCA, and to include a copy of the forms required to report dispensing or to apply for a waiver. The motion was seconded and passed.

ELECTION OF OFFICERS:

Ms. Swain stated the Nominating Committee nominated

- Dr. Gaskins for President,
- Dr. Rizkalla for Vice-President, and
- Ms. Swecker for Secretary-Treasurer

She then opened the floor for nominations for each office. There were no additional nominations and the Board agreed by consensus to elect the slate of officers as presented by the Nominating Committee.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 12:05 p.m.

Melanie C. Swain, R.D.H., President

Sandra K. Reen, Executive Director

Date

Date