Unapproved

VIRGINIA BOARD OF DENTISTRY
MINUTES
DECEMBER 7, 2012

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:04 a.m. on December 7, 2012, in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Herbert R. Boyd, III, D.D.S., President

BOARD MEMBERS PRESENT:

Martha C. Cutright, D.D.S.
Charles E. Gaskins, III, D.D.S.
Myra Howard, Citizen Member
Jeffrey Levin, D.D.S.
Evelyn M. Rolon, D.M.D.
Melanie C. Swain, B.S.D.H-R.D.H
Tammy K. Swecker, R.D.H
James D. Watkins, D.D.S.

BOARD MEMBERS ABSENT: Surya P. Dhakar, D.D.S.

STAFF PRESENT:

Sandra K. Reen, Executive Director for the Board
Dianne L. Reynolds-Cane, M.D., DHP Director
Elaine J. Yeatts, DHP Senior Policy Analyst
Kelley Palmatier, Deputy Executive Director for the Board
Huong Vu, Operations Manager for the Board

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

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

PUBLIC COMMENT: Dr. Boyd reminded everyone that the comment period for the NOIRA on the Sedation and Anesthesia Regulations is closed. Then he asked for public comment.

Dr. Kirk Norbo, Virginia Dental Association (VDA) President, thanked Dr. Boyd for attending VDA's meetings to facilitate communications. He added that the VDA decided not to pursue a petition on fee splitting. He asked that the Board adopt the American Dental Association (ADA) Code of Ethics in the periodic review of the Regulations.

Dr. William Bennett from Williamsburg commented that he has appealed to the Board repeatedly to address advertising issues for many years but little has been done. He stated the public is definitely being harmed and provided copies of the ADA Principles of Ethics and Code of Professional Conduct. He urged the Board to review the ADA information and to take a more aggressive approach toward advertising complaints.

APPROVAL OF MINUTES:

Dr. Boyd asked if the Board members had reviewed the September 7, 2012 Business minutes. Dr. Levin moved to accept the minutes. The motion was seconded and carried.

Dr. Boyd asked if the Board members had reviewed the September 7, 2012 Formal Hearing minutes. Dr. Gaskin moved to accept the minutes. The motion was seconded and carried.

Dr. Boyd asked if the Board members had reviewed the October 11, 2012 and November 13, 2012 Telephone Conference Call minutes. Ms. Howard moved to accept the minutes. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

Dr. Boyd noted that Dr. Cane let him know she has nothing to report.

SURVEY RESULTS:

Dr. Carter stated that the reports address the responses made by licensees who renewed their licenses online by March 2012. She then reported the following:

- Response rates - 80% of dentists and 88% of dental hygienists
- Completed undergraduate programs in VA - 48% of dentists and 99% of dental hygienists
- Average age – 49 years old for dentists, of which 72% are males; 42 years old for dental hygienists, of which 98% are females
- Diversity (White, non-Hispanic) – 73% of dentists and 85% of dental hygienists
- No Educational debt – 2/3 of dentists and 3/4 of dental hygienists

Dr. Carter added that most licensees saw less than 100 patients per week. She handed out two embargoed reports on the surveys and asked Board members for their feedback by December 21, 2012, so the reports might be posted to the DHP website.

LIAISON/COMMITTEE REPORTS:

Board of Health Professions (BHP). Dr. Levin stated that he participated in the agency's new Board member orientation. He then suggested telecasting or video conferencing a formal hearing to facilitate observation by dental students.

AADB (meeting in San Francisco). Dr. Cutright stated that her report is on P12 and P13 and that the Board is current with the national issues that were discussed at the meeting.

ADEX (meeting in Chicago). Dr. Cutright thanked the Board for sending her and added that her report is on P14 and P15.

Dr. Watkins stated that his report is on P16 and noted that the Board may want to remove the phase "minimum competency" if it is in the current laws and regulations language. He suggested using a similar phrase like "meets the criteria" for licensure.

SRTA. Dr. Watkins reported that the SRTA Board met last Friday, exam assignments were made, and SRTA will send them out within the week. He added that he attended the ADEX exam in Boston as an observer and that ADEX exams are administered there during the weekdays.

SRTA Board of Directors Report. Dr. Boyd stated that the report from Dr. Hall is in the agenda package.

Executive Committee. Dr. Boyd reported that the Committee met yesterday to revise the current Bylaws, which will be on the Board's March agenda.

LEGISLATION AND REGULATIONS:

Status Report on Regulatory Actions. Ms. Yeatts reported the following:

- Sedation and Anesthesia permits for dentists - The emergency regulations for sedation and anesthesia permits went into effect on September 14, 2012. She noted that the comment period on the Notice of Intended Regulatory Action (NOIRA) closed on November 7, 2012, and the proposed regulations to replace the emergency regulations appear later on the Board's agenda for action.
- Periodic Review – The proposed regulations to establish four chapters have been at the Secretary's Office for 179 days.
- Training in pulp capping for dental assistants –This regulation went into effect on November 22, 2012.
- Radiation Certification –This regulation became effective on December 6, 2012.

- Recovery of Disciplinary Costs – This regulation went into effect on November 21, 2012. She added that Dentistry is the first Board in DHP with the authority to recover costs.
- Changes to temporary and faculty licensure – These regulations became effective on November 21, 2012.
- Remote supervision of dental hygienists in public health clinics – This regulation also went into effect on November 21, 2012.

Tabitha McGlaughlin Petition for Rulemaking. Ms. Yeatts stated that it is presented for Board action and that Ms. McGlaughlin petitioned the Board to add Ursus Lifesavers & Aquatics to the list of accepted continuing education (CE) providers in regulation 18VAC60-20-50. Ms. Reen commented that several years ago the Board removed the provision for it to review and approve individual providers due to the lack of staff resources to oversee such providers.

Dr. Watkins moved to deny the petition due to lack of time and resources to properly evaluate each potential provider of CE. The motion was seconded and passed.

Review/Adopt Proposed Sedation/Anesthesia Permit Regs. Ms. Yeatts stated that the Regulatory-Legislative Committee has reviewed and addressed the comments received and asked if there were any questions about the comments. No questions were asked. She explained that the proposal before them shows the changes proposed by the Committee in the current emergency regulations, but the version that will be issued for public comment will be released as changes to the current final regulations. She asked the Board to review section by section and to make changes as needed. All agreed.

18VAC60-20-10.Definitions.

Ms. Yeatts noted that the words and terms are arranged in order as general definitions, supervision definitions, and sedation definitions. Dr. Levin moved to add the definition of "titration" because the absorption of medication is unpredictable; titration can be harmful to patients if not used properly. Following discussion of an appropriate definition, Ms. Yeatts read the proposed definition: "'Titration' means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation." The motion to adopt this definition was seconded and passed.

Dr. Watkins moved to adopt Section 10 as amended. The motion was seconded and passed.

18VAC60-20-30. Other fees

No changes were proposed. Dr. Gaskins moved to adopt Section 30 as amended. The motion was seconded and passed.

18VAC60-20-107. General provisions.
Ms.Yeatts said the Committee recommended adding a general requirement for blood pressure and pulse to be taken prior to administration of any level of sedation and anesthesia. Ms.Swain stated such a requirement would be overkill. Dr. Levin moved to not include this as a requirement. The motion was seconded. There was a discussion of making this a requirement only for patients with high blood pressure .Then the motion by Dr. Levin was passed with eight votes in favor and one vote against.

Section F – Dr. Levin moved to include the provision for pediatric patients. The motion was seconded and passed.

New section H – Dr. Levin moved to add a reference to the requirement in 18VAC60-20-140 for reporting adverse reactions. The motion was seconded and passed.

New section I – Dr. Levin moved to add a reference to the CE requirements for administration in 18VAC60-20-50(A)(2). The motion was seconded and passed.

Dr. Levin moved to adopt section 107 as amended. The motion was seconded and passed.

18VAC60-20-108.Administration of minimal sedation (anxiolysis or inhalation analgesia)
Dr. Levin moved to adopt section 108 as proposed. The motion was seconded and passed.

18VAC60-20-110. Requirement for the administration of deep sedation/general anesthesia.
Section D - Ms. Yeatts said the word "***should***" should be changed to "***must***" in the last sentence. This change was agreed to by consensus.

Section E.2(c) – Ms. Yeatts said the subsection referenced should be "C" instead of "B." This change was agreed to by consensus.

Section E.3 – Dr. Levin asked that the word "***numb***" be changed to "***anesthetize***." This change was agreed to by consensus.

Section F.1 and F.2 – Dr. Levin asked that the regulations specify that equipment must be appropriately sized for children and adults. Ms. Yeatts recommended including the provision for appropriately sized equipment in these sections rather than adding it multiple times in the list of equipment. This recommendation was agreed to

by consensus, and development of the language was delegated to staff.

Sections G.1and G.2 were reversed and basic edits were agreed to by consensus.

Section G.3 (a) – The term "***pulse oximeter***" was deleted by consensus.

Dr. Boyd asked if a provision should be added to address how many patients a dentist might have under deep sedation/general anesthesia at the same time. Discussion followed about the variety of situations that might need to be addressed. No motion was made.

Dr. Watkins moved to adopt section 110 as proposed and amended. The motion was seconded and passed.

18VAC60-20-120. Requirements for administration of conscious/moderate sedation.
Section G –By consensus, the word "***should***" was replaced with "***must***" in the last sentence.

Section H.3 – By consensus, the last sentence on pediatric patients was retained.

Section H.4 – By consensus, the word "***numb***" was replaced with "***anesthetize.***"

Section I.15 – The word "***intravenous***" was replaced with the word "**parenteral**" and "***or if the dentist is using titration***" was added by consensus.

Section J2 – The Board agreed to add "***at least***" after "***shall consist of"*** in the first sentence.

Dr. Watkins moved to adopt section 120 as proposed and amended. The motion was seconded and passed.

18VAC60-20-135. Personnel assisting in sedation or anesthesia.
Dr. Watkins moved to adopt section 135 as proposed. The motion was seconded and passed.

BOARD DISCUSSION/ACTION: **Review of Public Comment Topics.** Dr. Boyd stated that the comments received will be considered.

Diagnosing and Treating Sleep Apnea. Ms. Reen said that the American Academy of Sleep Medicine and the American Association of Oral and Maxillofacial Surgeons have asked the Board for its position in regard to sleep apnea. She asked for guidance on how to respond. Dr. Gaskins asked about the wisdom of accepting information from unknown organizations. Dr. Levin moved to refer this to the Regulatory-Legislative Committee for study. The motion was seconded and passed. Ms. Reen was advised to let the organizations know the Board is reviewing the topic but has found in disciplinary cases that diagnosis of sleep apnea is outside the scope of practice of dentistry.

Dental Practice Ownership and Fee Splitting. Dr. Gaskins moved to refer this to the Regulatory-Legislative Committee for further study. The motion was seconded and passed.

Dr. Boyd asked if a Regulatory Advisory Panel can be developed to help in addressing these issues. Ms. Reen said, "Yes". Dr. Levin moved to appoint a panel to assist in addressing these issues. The motion was seconded and passed.

REPORT ON CASE ACTIVITY:

Ms. Palmatier reported that in the first quarter of FY2013 the Board received a total of 89 patient care cases and closed a total of 37 for a 54% clearance rate. She added that the current caseload older than 250 days is 13%, and 87% of all cases were closed within 250 business days. She noted that the Board did not meet the agency's performance goals. She reminded Board members that the Board needs to close at least as many patient care cases as were opened. She added that Board members should plan to stay after informal conferences to review cases.

BOARD COUNSEL REPORT:

Mr. Casway said he heard the arguments in the NC and FTC litigation about teeth whitening, and he will update the Board when the outcome of the case is available.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

Ms. Reen reported the following:

- Conflict of Interest statements must be completed by Board members and staff by January 15, 2013.
- The AADA meeting focused on the new assessment and expert review services offered by AADB.
- The VDA has decided not to pursue legislation for the registration of dental laboratories.

- Adoption of revised dental lab work order forms was delayed pending the VDA's decision on pursuing legislation. The proposed forms which were developed by the Board/VDA workgroup are presented for adoption. She added that the workgroup requested that they be issued as guidance documents (GDs). Dr. Gaskins suggested to insert due date on both forms. Dr. Watkins moved to adopt the forms as amended. The motion was seconded and passed. Dr. Gaskins moved to post them as forms and as GDs. The motion was seconded and passed.
- GD 60-7 (Policy on Recovery of Disciplinary Costs) was effective on November 21, 2012. The revision of GD 60-7 is presented for action to revise the cost figures to reflect FY12 expenditures. Dr. Levin moved to adopt the GD as revised. The motion was seconded and passed.
- Board action is needed so she might respond to candidate inquiries about whether the optional ADEX Periodontal Clinical Exam is required for licensure in Virginia. She noted that there is no law or regulation which specifies the content of exams and that SRTA does not require a periodontal clinical exam. Dr. Levin moved that the ADEX Periodontal Clinical Exam not be required. The motion was seconded and passed.

CASE RECOMMENDATIONS: **Case# 142784 and Case# 143977**

Closed Meeting: Dr. Levin moved that the Board convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* for the purpose of deliberation to reach decisions in the matters of Case # 142784 and Case # 143977. Additionally, Dr. Levin moved that Board staff, Ms. Reen, Ms. Vu, Ms. Palmatier and Mr. Casway, Board Counsel, attend the closed meeting because their presence in the closed meeting is deemed necessary and will aid the Board in its deliberations.

Reconvene: Dr. Levin moved that the Board certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and passed.

Dr. Watkins moved to accept the Consent Order for Case # 142784 as amended. The motion was seconded and passed.

Dr. Levin moved to accept the recommended Order of the Credentials Committee for Case # 143977. The motion was seconded and passed.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:45 p.m.

Herbert R. Boyd, III, D.D.S., President	Sandra K. Reen, Executive Director
Date	Date