

**VIRGINIA BOARD OF DENTISTRY
MINUTES
SEPTEMBER 13, 2013**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:06 a.m. on September 13, 2013, in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

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

**BOARD MEMBERS
PRESENT:** Charles E. Gaskins, III, D.D.S.
Myra Howard, Citizen Member
Al Rizkalla, D.D.S.
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:** Surya P. Dhakar, D.D.S.
Evelyn M. Rolon, D.M.D.

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: None

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

PUBLIC COMMENT: Dr. Robert Allen, of Hampton, VA, said he was again asking the Board to address who may own and operate a dental practice in VA since as he did not receive a response to this question following the September 2012 meeting of the Board.

Dr. William Bennett, of Williamsburg, VA, stated that the Board needs to reform its operations to address ethical issues that come from a changing professional environment. He encouraged a joint initiative with the Virginia Dental Association (VDA) to address unprofessional activity and provided a letter expressing his concerns.

Dr. Kirk Norbo, President of VDA, invited the Board to have a representative attend the VDA Board of Director meetings.

APPROVAL OF

MINUTES:

Dr. Levin asked if the Board members had reviewed the July 31, 2009 and September 6, 2012 New Member Orientation minutes. Ms. Howard moved to accept the minutes. The motion was seconded and carried.

Dr. Levin asked if the Board members had reviewed the March 7, 2013 and March 8, 2013 Business minutes. Ms. Swain moved to accept the minutes. The motion was seconded and carried.

Dr. Levin asked if the Board members had reviewed the April 2, 2013 and April 24, 2013 Telephone Conference Call minutes. Dr. Gaskins moved to accept these minutes. The motion was seconded and carried.

Dr. Levin asked if the Board members had reviewed the June 6, 2013 Formal Hearing and June 6, 2013 Case Recommendation minutes. Dr. Gaskins moved to accept these minutes. The motion was seconded and carried.

Dr. Levin asked if the Board members had reviewed the July 26, 2013 New Member Orientation and August 29, 2013 Telephone Conference Call minutes. Dr. Gaskins moved to accept these minutes. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

Dr. Levin noted that Dr. Cane is not available to attend today.

LIAISON/COMMITTEE REPORTS:

Board of Health Professions (BHP). Dr. Levin stated that the May 2013 meeting was cancelled. He added that at the previous meeting, the Board discussed the use of audio visual technology at formal hearings to facilitate observation by dental students.

AADB. Dr. Levin stated that Dr. Boyd attended the Mid-Year meeting in April 2013 and his report is provided in the agenda package.

ADEX. Dr. Watkins stated that he will attend the annual meeting in November 2013.

SRTA. Ms. Swecker reported that she attended the Dental Hygiene Educators meeting on August 8, 2013. She added that her report is provided in the agenda package and she will be happy to answer any questions.

Dr. Watkins had no additional information and his report is provided in the agenda package.

Examination Committee. Ms. Swecker said that the minutes of the last Committee meeting is provided in the agenda package.

LEGISLATION AND REGULATIONS:

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

- Sedation and Anesthesia permits for dentists - The proposed final regulations are at the Governor's Office awaiting approval to publication for public comment and the emergency regulations will expire today, September 13, 2013, unless the requested six-month extension is granted.
- Periodic Review – The proposed regulations to establish four chapters are at the Governor's Office awaiting approval for publication for public comment.
- Addition of AAHD to approved continuing education (CE) providers – the petition was submitted by the American Academy of Dental Hygiene (AADH) to be added to the list of approved CE sponsors. The Board accepted the petition using the fast-track action regulatory process. It will be effective on September 26, 2013.

Response to Petition for Rulemaking from Ms. Hickman. Ms. Yeatts stated that Deborah Hickman submitted the petition to add a different pathway to obtain DA II registration. She added that after speaking with the Dental Assisting National Board (DANB), Ms. Hickman submitted the amended petition. She noted that the amended petition includes DA II information from NC, SC, and D.C. She stated that the petition is presented for Board action.

Ms. Reen noted that the two duties noted as examples of expanded functions in SC are duties any dental assistant might perform in VA. Ms. Yeatts noted that some comments received agreed that the Board's current pathway is sufficient, others favored an alternate pathway.

Ms. Yeatts stated that the Board has three action options. If the Board accepts the petition, then the regulatory process starts. If the Board rejects the petition completely, it must state its reason for denial. Or the Board can deny the initial petition but will consider modifying the requirements for obtaining registration.

Dr. Wyman moved to deny and refer the petition to the Regulatory-Legislative Committee for further review. The motion was seconded and passed.

Response to Petition for Rulemaking from Dr. Dickinson. Ms. Yeatts stated that Terry Dickinson, Executive Director of Virginia Dental Association (VDA), submitted the petition to prohibit fee splitting. She added that the petition is presented for Board action.

Ms. Yeatts provided sections from the VA Medical Practice Act on sharing fees and receiving remuneration for referrals. She noted that most of the comments received favored the petition. She added that since there is no Board Counsel present, she recommended that the Board deny the petition and refer the request to a committee for further consideration.

Dr. Gaskins move to deny the petition and to refer the request to the Regulatory-Legislative Committee for further consideration. The motion was seconded and passed.

Response to Petition for Rulemaking from Mr. Tavakoli. Ms. Yeatts stated that Vahid Tavakoli submitted the petition to require a mandatory five year warranty on crowns and bridges from the day of installation. She added that the petition is presented for Board action. She noted that the Board has three action options to consider.

Ms. Yeatts added that the majority of the comments received opposed the petition. By consensus, the Board agreed that there are many reasons for the failure of crown and bridge work not all of which can be controlled by the dentist.

Dr. Gaskins moved to deny the petition. The motion was seconded and passed.

§54.1-2713.D. License to Teach Dentistry; renewal. Ms. Yeatts stated that this Code section was amended in 2012 and as a result the regulations need to be amended to conform to the statutory provision for renewal of this type of license.

Dr. Watkins move to delete "*or a faculty license*" in 18VAC60-20-20.A to conform to the Code. The motion was seconded and passed.

**BOARD
DISCUSSION/ACTION:**

Review of Public Comment Topics. Dr. Levin asked if the Board wanted to address who may own a dental practice and no response was made.

Dr. Vaughan's Comment - Ms. Reen noted that there was written comment to consider from Dr. Vaughan about having a retired license status. She commented that it might be possible to have this option added to the database. Dr. Watkins recommended having staff to investigate establishing this option. The recommendation was adopted by consensus.

Raven Blanco Foundation Emergency Preparedness - Ms. Reen stated this is a new request from the Foundation to require emergency preparedness in all dental offices. Ms. Yeatts added that the current regs and the proposed final regs on sedation and anesthesia do address emergency preparedness. By consensus, the Board took no action and asked staff to respond.

ADAA Position Paper - Ms. Reen stated that the ADAA is asking state boards to establish education requirements and credentialing of all dental assistants. The Board agreed by consensus to accept the ADAA position statement as information and to take no action.

AADB Guidance - Ms. Reen stated that the AADB is asking for comments regarding draft "Guidelines on Standards of Conduct and Ethics for State Boards and Board Members." The Board agreed by consensus to take no action.

**REPORT ON CASE
ACTIVITY:**

Ms. Palmatier reviewed the last quarter's numbers for patient care cases received and closed. She then went over the case process and the time allotted to the different stages a complaint goes through to closure. She pointed out that the Board is allotted only 120 work days to complete work related to determining probable cause and taking disciplinary action. She said it is imperative that Board members complete a case review within 15 days. She also went over staff's suggested solutions to meet the key performance measures that the agency has set.

**BOARD COUNSEL
REPORT:**

Off Duty Scrutiny - Ms. Reen stated that Mr. Casway is out on extended leave and that no Assistant Attorney General is currently assigned to the Board. She added that Mr. Casway had asked that the article be reviewed by Board members.

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

2014 Proposed Calendar – Ms. Reen noted that the Board usually votes on the proposed calendar in June but adoption was delayed since the June business meeting was cancelled. She added that it is offered for adoption since staff had not received any requests for changes. Ms. Swecker moved to adopt the proposed 2014 calendar. The motion was seconded and passed.

CODA Recognition of Canadian Accreditation- Ms. Reen asked the Board if it wanted to consider acceptance of dental education programs holding Canadian accreditation based on the reciprocal arrangement between CODA and CDAC. She noted that this agreement does not grant CODA accreditation, which is currently required for licensure in VA. She added that in recent months she has worked with a number of Canadian applicants who believed they were eligible for licensure in VA based on this reciprocal arrangement. Dr. Rizkalla moved to accept this report as information and take no action. The motion was seconded and passed.

SCDDE Annual Meeting - Ms. Reen stated that the SCDDE meeting will be held in VA in January 2014 and is being planned and hosted by the VCU School of Dentistry. She added that the announcement of the meeting, which was issued by the secretary/treasurer of SCDDE, listed the VA Board of Dentistry as a co-host even though she had no advance knowledge of the designation. She said Dr. Cane, the director of DHP, told her the Board would need approval from the Secretary of Health and Human Resources in order to be a host or sponsor of any meeting or conference. Ms. Reen expressed concern that such a request is likely to take months to process and recommended that the Board authorize her to renew her request that the Board no longer be identified as a co-host or sponsor of the 2014 meeting. Dr. Gaskin moved to accept this recommendation. The motion was seconded and passed.

Portability of AAOMS Certificates – Ms. Reen stated that she needed guidance on the Board's intent regarding accepting AAMOS certificates in

lieu of requiring oral and maxillofacial surgeons (OMSs) to obtain a sedation/anesthesia permit. She reported that she is concerned that the emergency regulations and the proposed regulations fail to address inspections for itinerant permit holders, practices with multiple permit holders, and for OMSs with practices in VA and in one or more other states.

She noted that she has consulted with Board Counsel and was advised that the permit exemption for OMSs only applies when the AAOMS office examinations are conducted on offices in VA. By consensus, the Board agreed to refer this matter to the Regulatory-Legislative Committee for further study and agreed with the guidance given by Board Counsel.

Revisions of Guidance Documents (GD).

60-1 Confidential Consent Agreements – Ms. Reen stated that this guidance document needs to be revised since the probable cause process has changed. She added that the proposed revision is presented for Board action. Dr. Watkins moved to adopt the revised GD 60-1. The motion was seconded and passed.

60- 6 Practicing with an Expired License – Ms. Reen stated that the Administrative Proceeding Division asked that this policy be amended to make it clear that the subject addressed is practicing with an expired license. She added that the proposed revision is presented for Board action. Dr. Watkins moved to adopt the revised GD 60-6. The motion was seconded and passed.

60-17 Recovery of Disciplinary Costs – Ms. Reen noted that the revision of GD 60-7 is presented for action to revise the cost figure to reflect FY13 expenditures. Dr. Watkins moved to adopt the revised GD 60-17. The motion was seconded and passed.

VDHA 2013 Annual House of Delegates Invitation – Ms. Reen stated that this was provided as information only, no action needed. She added that she will ask Dr. Levin to assign a representative.

Committee of the Whole – Ms. Reen noted that this matter was not on the agenda but she wanted to bring it to the Board's attention. She stated that since the Board has many new members, 5 in 2012 and 2 in 2013, she is recommending that the needed Regulatory-Legislative Committee meeting be held as a committee of the whole to help Board members become familiar with the process and substance of regulatory actions. All agreed.

**NOMINATING
COMMITTEE
REPORT:**

Dr. Levin reported that the Nominating Committee met this morning and nominated the following officers for 2013-2014:

Jeffrey Levin, DDS – President

Melanie C. Swain, RDH – Vice President

Charles E. Gaskins, DDS – Secretary-Treasurer

Dr. Levin added an apology for not asking Board members about their interest in serving or in offering nominations. He then opened the floor for further nominations and no response was made.

Dr. Watkins move to elect the nominees as reported. The motion was seconded and passed.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 11:45 a.m.

Jeffrey Levin, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date