VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
NOVEMBER 9, 2012

TIME AND PLACE: The meeting of the Regulatory-Legislative Committee of the Board of Dentistry was called to order at 1:36 p.m., on November 9, 2012 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

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

MEMBERS PRESENT: Melanie C. Swain, R.D.H.
Charles E, Gaskins, III., D.D.S.

MEMBERS ABSENT: Evelyn M. Rolon, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Huong Q. Vu, Operations Manager

OTHER BOARD MEMBER PRESENT: Herbert R. Boyd, III, D.D.S.

OTHERS PRESENT: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
Howard Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With three members present, a quorum was established.

PUBLIC COMMENT: Dr. Levin reminded everyone that the comment period for the NOIRA on the Sedation and Anesthesia Regulations is closed. He added that audience members will be permitted to ask questions as the Committee goes through the discussion draft later on in the agenda.

Dr. Burns, Jr with the Virginia Dentists for Intravenous Sedation and Dr. Hamlin indicated that they had intended to comment on the NOIRA and would stay for the Committee discussion.

APPROVAL OF MINUTES: Dr. Levin asked if the Committee members had reviewed the November 4, 2011 minutes. No changes or corrections were made. Dr. Gaskins moved to accept the November 4, 2011 minutes. The motion was seconded and passed.

STATUS REPORT ON REGULATORY ACTIONS: **Emergency Sedation/Anesthesia Regulations** – Ms. Yeatts stated that these regs went into effect on September 21, 2012 and will expire on

September 13, 2013, but the Board may request a 6-month extension until March 13, 2014. She added that they must be replaced by final regulations, which the Board may adopt at its December 7, 2012 meeting. She noted that the proposed regulations are not required to have the same language as the emergency regulation.

Ms. Yeatts stated that the emergency Regulations require dentists who use deep sedation/general anesthesia or conscious/moderate sedation in a dental office must have the permits by March 1, 2013. All permits will expire on March 31, 2014 and are subject to annual renewal by March 31 each year concurrent with renewal of dental licenses. She then reported that:

Periodic Review – the proposed regulations to establish four chapters have been at the Secretary's Office for 155 days.

Training in pulp capping for dental assistants – has been approved and will be effective on November 22, 2012.

Radiation Certificate – this amendment has been approved and will be effective on December 6, 2012.

Recovery of Disciplinary Costs – this regulation allows the Board to recover the administrative costs from any licensee disciplined by the Board. She added the recovered costs may not exceed a total of $5,000 and all these costs will go directly to the Board's account and shall not constitute a fine or penalty. She noted that this regulation will be effective on November 21, 2012.

Changes to temporary and faculty licensure – these will be effective on November 21, 2012.

Remote supervision of dental hygienists in public health clinics - these will be effective on November 21, 2012.

COMMENTS AND QUESTIONS ON EMERGENCY REGULATIONS FOR SEDATION AND ANESTHESIA PERMITS:

Ms. Reen stated that from comments and questions received, it was clear that there is confusion about who must have a permit because the emergency regs do not include the provisions for minimal sedation. She added that there were also a number of comments on EKG requirement for conscious/moderate sedation and the use of particular drugs. She stated that these exchanges with licensees are provided to assist the Committee in developing proposed final regulations.

Ms. Reen referred the Committee to the green page which is the current regulation for minimal sedation, 18VAC60-20-108 (Administration of

anxiolysis or inhalation analgesia) and is provided as a reference as the Committee goes through the discussion draft. Ms. Yeatts suggested changing the title to "Minimal Sedation" and adding this section in the proposed final regs to address anxiolysis and inhalation analgesia. Following discussion, Dr. Levin asked staff to develop and include this section as recommended.

DISCUSSION OF PROPOSING CHANGES TO THE SEDATION/ ANESTHESIA REGULATIONS:

Ms. Reen said the discussion draft includes highlighted sections and notes to help the Committee consider the comments received from the public and those offered by staff. Dr. Levin noted that the audience could participate in the discussion.

P82-P85

Ms. Reen stated that the definitions, which are highlighted, were addressed by Dr. Hoard who recommends adhering to the definition of general anesthesia and levels of sedation/analgesia adopted by the American Society of Anesthesiologists (ASA). She then referred the Committee to page P101 and page P102, which were provided as reference.

Mr. Casway suggested listing the definitions of the levels of supervision and the levels of sedation together to facilitate comparison. Ms. Yeatts indicated that definitions are required to be listed alphabetically and said she would see if these definitions could be grouped. Dr. Gaskins asked if Anxiolysis is still part of the definition. Ms. Reen replied yes and added that it will be linked in the Minimal Sedation section.

The Committee reviewed the definitions and decided to conform them to the to the ASA language and to group the levels of supervision and the levels of sedation.

P87

18VAC60-20-107.C – the Committee agreed with the staff recommendation to add "*any level of*" between "administration of" and "sedation".

P88

18VAC60-20-107.F – Ms. Reen noted that Dr. Hamlin requested that dentists be allowed to prescribe anti-anxiety agents to children aged 12 and under to be taken prior to arrival in the dental office. She added that the current proposed language is the national standard which comes from the guidelines adopted by the American Academy of Pediatric Dentistry and the American Academy of Pediatrics.

After discussion, Dr. Gaskins moved to strike this section with further investigation. The motion was seconded and passed.

18VAC60-20-107.G – Ms. Yeatts noted that Ms. Satterlund requested clarification of the term 'qualified dentists." The Committee agreed with Ms. Yeatts' suggestion to use "*than the dentist intended and was prepared.*"

P89

18VAC60-20-110.A – Ms. Yeatts noted that Ms. Satterlund requested clarification of "no dentist may employ or use." She added that the staff recommendation is to change "employ or use" to "*administer.*" Ms. Reen said the Committee needs to consider the comments made by the Virginia Association of Nurse Anesthetists (VANA) on the meaning of the Code language "provides or administers" and VANA's belief that the Board has misinterpreted the "plain meaning" of the statute by allowing dentists without permits to delegate administration to other qualified health professionals. Ms. Reen said that Board Counsel should be given time to research VANA's position in order to advise the Board so the Committee has the option of suspending discussion of the affected regulations or preceding based on the Board's interpretation of the statute in the Emergency Regulations now in effect. After discussion, the Committee decided to proceed based on the Board's interpretation and to change "employ or use" to "*administer.*"

Ms. Yeatts raised the question of who is responsible for ensuring that the equipment and staffing requirements are met. The Committee said it should be made clear that the delegating dentist is responsible.

P90 and P91

18VAC60-20-110.E(1) – Ms. Yeatts noted that Ms. Satterlund requested clarification of "a dentist not qualified to administer." She added that the staff recommendation is to change to "*a dentist who does not hold a permit to administer.*" The Committee agreed.

18VAC60-20-110.E (2) - Ms. Yeatts recommended that "a dentist qualified pursuant to subsection B" be changed to "*a dentist who does not hold a permit to administer.*" The Committee agreed.

Concerns raised in comment and by members of the audience about supervision of certified registered nurse anesthetists were considered and no action was taken by the Committee.

P92

18VAC60-20-110.F – Ms. Yeatts recommended replacing "emergency" in the title of the subsection with "*required.*" The Committee agreed.

18VAC60-20-110.G(1) – Ms. Reen noted that many of the comments submitted opposed requiring the dentist to be in the operatory through

the dental procedure because having a trained staff person is adequate. Ms. Reen went on to say that these comments misinterpret the requirements but indicate the regulations should be developed to better distinguish the requirements for monitoring and treatment consistent with the four (4) steps of inducing sedation, stabilizing the level of sedation, treatment and recovery from sedation. The Committee agreed to change the word "procedure" to "treatment" and charged staff with clarifying the monitoring requirement.

P93

18VAC60-20-110.G(3)(a) – the Committee decided to add "*EKG readings*" at the beginning of the paragraph and to strike the terms "pulse and pulse oximeter."

18VAC60-20-110.G(3)(b) – the Committee revised the first sentence to read "*The patient's above vital signs and EKG readings shall be monitored, recorded every five minutes and the reported to the treating dentist throughout the administration of controlled drugs and recovery.*"

18VAC60-20-120 – the Committee agreed with the staff recommendation to add "*/moderate*" following "conscious" in the title of the subsection.

P94 and P96

The Committee agreed that the provisions on these two pages would be made consistent with the changes made in 18VAC60-20-110.

P97

18VAC60-20-120.H(2)(e) – Ms. Yeatts notes that VANA does not believe this provision falls within the scope of practice of registered nurses (RNs). Ms. Reen stated that she had worked with the Executive Director of Board of Nursing in developing this language and it is her understanding that with the level of supervision specified this is within the scope of practice of RNs. No change was made.

18VAC60-20-120.H(3) – Ms. Yeatts noted that the same change will be made as in 18VAC60-20-107.F, so no further action is needed.

P98

18VAC60-20-120.I(11) – Ms. Yeatts noted that there were quite a few comments on this provision to delete or limit the requirement for an EKG monitor to intravenous administration. Following discussion, the Committee decided to limit this requirement to intravenous administration.

18VAC60-20-120.I(12) - Ms. Yeatts noted that clarification of the term "Suction apparatus" is requested by Dr. Seirawan. The Committee decided that no clarification is needed.

18VAC60-20-120.J – Ms. Yeatts noted that the changes made in 18VAC60-20-110.G(1) will be made here.

P99
18VAC60-20-120.J(3)(c) – after discussion, the Committee decided to make the last sentence requiring a qualified person to remain on the premises a separate provision (3)(d).

P100
18VAC60-20-135 – Ms. Reen noted that Dr. McMillan requested the clarification of the term "ancillary personnel." After discussion the Committee decided to delete the word "ancillary."

Dr. Levin said that staff will draft the revised proposed regulations and send to Committee members for review and input. All agreed. Ms. Reen added that staff will need to change language and reorganize some of the provisions to accomplish the Committee's decisions.

CONSIDERING OF ISSUING A GUIDANCE DOCUMENT ON THE SEDATION/ANESTHESIA REGULATIONS:

Dr. Levin suggested that a guidance document (GD) to be developed. Ms. Reen Said that a guidance document could not be developed until the interpretation of the term "provided" is addressed. Ms. Yeatts suggested that any guidance issued should be provided in the form of questions and answers. All agreed.

NEXT MEETING: The proposed date of the next meeting will be determined at a later date.

ADJOURNMENT: With all business concluded, Dr. Levin adjourned the meeting at 4:41 p.m.

Jeffrey Levin, D.D.S., Chair

Sandra K. Reen, Acting Executive Director

Date

Date