

**VIRGINIA BOARD OF DENTISTRY
MINUTES
June 11, 2010**

- TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:05 A.M. on June 11, 2010 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:** Jacqueline G. Pace, R.D.H., Vice President
Robert B. Hall, Jr. D.D.S., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Meera A. Gokli, D.D.S.
Myra Howard, Citizen Member
Augustus A. Petticolas, Jr. D.D.S.
Paul N. Zimmet, D.D.S.
- BOARD MEMBER ABSENT:** Misty Mesimer, R.D.H.
- STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board
Dianne L. Reynold-Cane, M.D., DHP Director
Arnie Owens, DHP Deputy Director
Elaine Yeatts, Senior Policy Analyst, DHP
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant
- 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:** **Terry Dickinson, D.D.S.**, spoke on behalf of the Virginia Dental Association regarding concern about Mobile Clinics Regulations. Dr. Dickinson asked the Board to consider adding the name of the dentist that has agreed to provide follow-up care on the patient information sheet.
- Dr. Levin stated that the request will be added to the agenda for Board discussion.
- APPROVAL OF MINUTES:** Dr. Levin asked if the Board members had reviewed the minutes in the agenda package. Dr. Petticolas moved to accept the minutes of the March 11, 2010 meeting. The motion was seconded and carried.

Dr. Boyd asked that the March 12, 2010 minutes be amended on page 6 in response to the VDHA's comments, the first bullet to read "current limitation of 2" instead of "current limitation to 2." Also, on page 8 in Executive Director's report/business, the first bullet to read "application process online license" instead of "application process on license." Ms. Pace moved to accept the minutes of the March 12, 2010 meeting as amended. The motion was seconded and carried.

**DHP DIRECTOR'S
REPORT:**

Dr. Levin introduced Dr. Cane, the new DHP Director and Mr. Owens, the DHP Deputy Director.

Dr. Cane thanked the Board for their hard work and said she looks forward to working with the Board. Mr. Owen added that he is happy to be serving at DHP.

**SANCTION
REFERENCE
POINTS (SRP):**

Neal Kauder of VisualResearch, Inc. thanked the Board for the opportunity to address SRP. Mr. Kauder stated that DHP has asked that the SRP be evaluated using three criteria:

- Consistency
- Proportionality
- Neutrality

He also said the evaluation should identify potential improvements to the system and recommend changes and that training on the results will be available.

He provided the SRP Agreement Analysis handout and stated that Dentistry's agreement rate through April 1, 2010 was 82% and higher than expected. He went on to show how the Board of Optometry had integrated policies on continuing education in one of its worksheets as an example of changes the Board might consider.

Dr. Zimmet asked Ms. Reen if the Board needed to modify its worksheets. Ms. Reen responded that the CE guidance document was needed whether or not the worksheets were modified then added that any information the Board would like to see when discussing sanctions could be added.

REPORTS:

Board of Health Professions (BHP). Dr. Zimmet reported he attended the May 4, 2010 meeting at which:

- Dr. Kauder reported on the SRP study,
- a report on the need for the Board of Medicine to regulate polysomnographers was accepted, and
- the Board endorsed pursuing the regulation of surgical assistants and surgical technician by the Board of Medicine.

Dr. Cane noted that the review process on regulating surgical assistants and surgical technicians was just beginning.

AADB. Dr. Levin reported that he and Ms. Reen attended the AADB meeting in Chicago in April 2010 where the following issues were discussed:

- How states address the scope of practice of oral surgeons
 - State policies on general dentists performing Botox
 - Strategies to improve access to care
 - Conflict of interest in regard to providers of continuing education
- Dr. Levin added that the next meeting will be in October 2010 in Florida.

SRTA. Dr. Gokli reported that she attended the board of directors meeting on June 3, 2010 at VCU where:

- The past president and president-elect were expelled from membership for not acting in the best interest of SRTA
- The request by schools for the exam to be conducted on Saturday and Sunday was denied,
- The request from University of South Carolina to have SRTA and CITA overlap exams was discussed and will be considered further when more information is available, and
- Using plastic teeth in the endodontics section was approved.

Dr. Gokli then asked Ms. Pace to report on the dental hygiene section. Ms. Pace stated that the exam is being given at three new schools and that the new exam is working fine.

LEGISLATION AND REGULATION:

Review of Regulatory Action. Ms. Yeatts reported that the following actions are at the Secretary's office for review of:

- Issuance of the NOIRA for periodic review and reorganization of chapter
- Release of proposed regulations on recovery of disciplinary costs for public comment
- Release of the replacement regulations on the registration of mobile clinics for public comment
- Publication of final regulations for the registration and practice of dental assistants II.

Amend Regulations Consistent with PMP Requirement. Ms. Yeatts stated the amendment to 18 VAC60-20-170 is presented for adoption by the Board as an exempt final action to conform to the provisions of §54.1-2525 for the Prescription Monitoring Program. She said the change provides grounds for disciplinary action for the unauthorized use or disclosure of confidential information received from PMP.

Following discussion, Dr. Zimmet moved to accept the regulation as proposed. The motion was seconded and passed.

Proposed Legislation. Ms. Yeatts stated the proposed legislation is presented for discussion and action from the Board.

Ms. Reen noted that this proposal stems from the work of the Regulatory/Legislative Committee on regulatory review which included agreement that the Board should register practices using moderate sedation, deep sedation and general anesthesia consistent with the practice of most of the other states. She noted that Virginia is one of the four states that do not have registration in place. She added that if the Board wants this legislation to be presented in 2011, it should adopt a proposal now.

Dr. Zimmet moved to advance the legislation as proposed. The motion was seconded and passed.

BOARD

DISCUSSION/ACTION:

CRDTS letter from Dr. Cosby. Dr. Levin advised this letter was provided as information only.

DANB Announcement of COPA Exam. Ms. Reen stated this was a communication from DANB in regard to the new exam being offered for Certified Oral Preventive Assistants. She said this exam addresses expanded functions that dental assistants are permitted to perform in other states.

Dental Laboratories. Dr. Levin stated that many states now require dental labs to disclose the materials used in constructing or repairing dental work, whether the work is performed offshore or domestically. The Board currently does not have this requirement in place. He recommended a study to be conducted by the Regulatory/Legislative Committee to look at what other states are requiring of dental labs. All agreed.

Letter from Dr. Bennett. Dr. Levin stated this is an information item. He noted that the Board has addressed previous complaints from Dr. Bennett about advertising and now has a guidance document in place.

Ms. Reen asked for guidance on responding to the complaints from a small number of licensees who are dissatisfied with the Board's management of advertising issues. She reviewed the response about needing evidence that something is actually false, deceptive or misleading and asked what more should be said regarding this issue. The consensus was that the response being given was adequate. Ms. Reen added that the Board could consider amending its guidance document if there is a way to make the rules clearer.

Dr. Boyd stated that he shared Dr. Bennett's concerns regarding advertising as a specialist when the specialty is not recognized by the ADA. Dr. Levin asked Dr. Boyd to review the advertising laws, regulations and guidance document and offer suggestions on how to

revise them. Dr. Boyd agreed and asked if he could work with an ad-hoc committee to include Dr. Bennett. Dr. Levin said he could and Ms. Reen asked to participate.

Dr. Hall asked if Virginia's laws mirror the federal law in regard to advertising. Mr. Casway indicated that the Board's policies are consistent with case law.

Application for Restricted Volunteer License. Dr. Petticolas asked the Board to consider amending the volunteer application, which is seven pages long when the Board of Medicine's is only two pages long. Following discussion, Dr. Levin asked that Dr. Petticolas work with Ms. Reen to review this application and the regulatory requirements and report to the Board at the next meeting. Dr. Petticolas agreed.

**REPORT ON REMOTE
SUPERVISION OF
DENTAL HYGIENISTS:**

Dr. Day and Dr. Browder, Virginia Department of Health (VDH) Division of Dental Health – gave a Power Point presentation on the current pilot project which addressed:

- The authorizing statute
- The development and content of the protocol being followed,
- The scope of service, and
- The three health districts in the pilot.

Dr. Day responded to questions about filling the vacancies, difficulties encountered and possible expansion.

**REPORT ON CASE
ACTIVITY:**

Mr. Heaberlin reported on the Board's FY2010 third quarter disciplinary performance on patient care cases noting that the:

- Clearance rate was 109%,
- Case load over 250 business days was 9%, and
- Cases closed within 250 days was 93%.

He went on to report that:

- 93 cases were received from Enforcement in the third quarter and 103 were closed.
- the 103 cases were closed as follows:
 - No Violation/Undetermined – 88 cases
 - Violation / IFC, PHCO, Formal – 12 cases
 - Violation / CCA – 3 cases
- Currently there are 5 cases over 250 days with two pending CCAs, two needing additional information and one at probable cause review.

He then walked Board members through a probable cause review exercise as a refresher for when to request further investigation, administrative proceedings, sanctions and closure.

Dr. Petticolas commented that the exercise was very helpful and he thanked Mr. Heaberlin and Ms. Reen. Dr. Zimmet suggested that the activity should occur annually and there was general agreement.

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

Ms. Reen reported the following:

- DHP will soon give all Board members state e-mail accounts. Discussion followed about public records.
- The Board needs to address the educational requirements in the DAI Regs for “performing pulp-capping procedures.” She advised that due to a drafting oversight this duty was not considered when the educational requirements were developed. She noted that at the March 12, 2010 meeting that duty was added to those delegable to a DAI but the educational requirements were not addressed. She reported discussing options for developing the requirement with Dr. Levin and Martha Clements, the Director of Continuing Education and Faculty Development at the VCU School of Dentistry and presented two options for discussion:
 1. Deciding that performing pulp capping procedures should be a distinct training module and charge the Regulatory/Legislative Committee with developing the requirements for adoption of proposed language at the September 17th Board meeting or,
 2. Deciding that performing pulp capping procedures is appropriately taught in the module on placing and shaping composite resin restorations and/or the module on amalgam restorations. Also deciding if the number of hours of the module should be adjusted for the inclusion of pulp capping procedures.

After discussion, Dr. Zimmet moved to accept option number two without an adjustment on the number of hours needed. The motion was seconded and passed.

- The proposed Guidance Document on Delegating to Dental Assistants is near completion and needs to be compared to the ADAA/DANB Alliance’s comprehensive dental assisting function list for consistency in terminology and completeness of our document. She asked that one Board member be assigned to work with her on completing work on this guidance document so it can be discussed at the September 17th meeting. Dr. Levin asked Dr. Zimmet to help with this task and he agreed.
- The proposed calendar for 2011 is offered for adoption. She noted that all Board members had an opportunity to note conflicts and no changes were requested. Dr. Zimmet moved to adopt the 2011 calendar. The motion was seconded and passed.
- Teresa Parrish has left the Board and Dr. Cane has approved the recruitment of a Disciplinary Case Manager which is in progress. She added that interviews will be conducted sometime in the middle of July.

- Current expenditures and projections indicate that the Board should be well in the black at the end of this fiscal year. She also noted that the Executive Committee does receive the monthly revenue and expenditure reports.
- Mr. Haddad's letter about the death of a child following dental treatment was provided as information. She added that she has responded to Mr. Haddad and will also let him know that the Board did adopt the draft legislation to require permits for the administration of sedation and general anesthesia which will be submitted for gubernatorial review.
- Mr. Bitting's counterpoint to Mr. Haddad's letter was also provided as information.

**BOARD COUNSEL
REPORT:**

Mr. Casway presented Mr. Pedrotty's letter requesting the promulgation or revision of regulations on anesthesia. Following discussion, Ms. Reen was asked to respond to Mr. Pedrotty with a request for an explanation including the identification of the specific policy changes he proposes so the Board might address them.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 1:30 p.m.

Jeffrey Levin, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date