VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY-LEGISLATIVE COMMITTEE
SEPTEMBER 8, 2011

TIME AND PLACE:	The meeting of the Regulatory-Legislative Committee of the Board of Dentistry was called to order at 2:05 p.m., on September 8, 2011 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.
PRESIDING:	Herbert R. Boyd, D.D.S., Chair
MEMBERS PRESENT:	Meera A. Gokli, D.D.S. Robert B. Hall, Jr., D.D.S. Jacqueline G. Pace, R.D.H.
MEMBERS ABSENT:	None
OTHER BOARD MEMBERS PRESENT:	Martha C. Cutright, D.D.S. Augustus A. Petticolas, Jr., D.D.S.
STAFF PRESENT:	Sandra K. Reen, Executive Director Donna Lee, Discipline Case Manager
OTHERS PRESENT:	Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
ESTABLISHMENT OF A QUORUM:	With all members of the Committee present, a quorum was established.
PUBLIC COMMENT:	No public comments were received.
APPROVAL OF MINUTES:	Dr. Boyd asked if the Committee members had reviewed the April 22, 2011 minutes. No changes or corrections were made. Dr. Gokli moved to accept the April 22, 2011 minutes. The motion was seconded and passed.
STATUS REPORT ON REGULATORY ACTIONS:	Ms. Yeatts reported the following status update of regulations: • Periodic Review and reorganization of Chapter 18 VAC 60-20 - Proposed regulations adopted on June 3, 2011; • Training in pulp capping for Dental Assistants II – Fast-Track- at the Governor's Office for signature; • Radiation certification – Fast-Track- at the Secretary's Office for approval;

- Recovery of Disciplinary Costs Regulations - are in final stage and are at the Governor's Office for signature; and
- Registration of Mobile Clinics – are in final stage and are at the Governor's Office for signature.

Registration of Mobile Clinics – Ms. Yeatts informed the Committee that there are currently no regulations in place for mobile dental clinics because the 6-month extension that was granted for the Emergency regulations expired on July 6, 2011. Ms. Yeatts further stated she has been in constant contact with the Governor's Office about the regulations.

Ms. Reen stated that the agenda materials for the Committee meeting need to be kept in order because they will be referenced in the Board Meeting tomorrow, September 9, 2011.

PROPOSED DRAFT OF SEDATION/ANESTHESIA REGULATIONS:

Ms. Yeatts stated that the requirement for registration of sedation/anesthesia permits was mandated by passage of Senate Bill 1146. She stated that the Draft emergency regulations need to adopted by the Board at its meeting on September 9, 2011 and the emergency regulations need to go into effect on December 27, 2011 and will stay in effect for 12 months.

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18VAC60-20-10 – Dr. Hall suggested that for clarification purposes, there should be a separate definition for conscious sedation and moderate sedation instead of the combined wording "Conscious/moderate sedation."

After discussion, it was agreed that Ms. Yeatts would add a definition for **"Moderate sedation"** which directs the reader to the conscious/moderate sedation definition.

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18VAC60-20-30 – Ms. Yeatts explained the rationale for using the renewal date of March 31 and the application and renewal fees of $100. Ms. Reen suggested that 18VAC60-20-30(J) be modified to show that the $350 inspection fee does not apply to a routine inspection of a dental office that holds a sedation or anesthesia permit.

The Committee agreed with the suggestion made by Ms. Reen. The Committee instructed Ms. Yeatts to draft the necessary language to be added to the regulation for consideration by the Board.

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18VAC60-20-110(A) – Ms. Yeatts stated that the regulations for sedation/anesthesia permits should be effective on December 27, 2011 so there will be a 3-month time period for a dentist to apply for and be issued a permit by the Board if they are currently using deep sedation/general anesthesia in their dental office.

The Committee expressed concern as to whether the 3-month time period would be adequate time for a dentist to submit an application and be issued a permit. Ms. Yeatts stated that the regulations do not impose any new requirements upon any dentist that is currently using deep sedation/general anesthesia so a dentist would be able to make application once the regulations become effective and the application is available. There is also no inspection required before the issuance of the permit.

Ms. Reen informed the Committee that it would be too costly to do an inspection before a permit is issued. She also stated that the Board has no idea what dentists are currently using deep sedation/general anesthesia. Ms. Yeatts suggested notice could be posted on the website to inform the dentistry community that emergency regulations will go into effect on December 27, 2011, and list what equipment is needed for the permits. Ms. Reen said another option would be to publish the notice in **BRIEFS** possibly in mid to late October.

There was a consensus by the Committee to give notice in **BRIEFS** and to keep the March 31 renewal date for the permits.

Ms. Reen stated that she received a comment about oral and maxillofacial surgeon (OMS) not having a permit to post for the public to know they are authorized to administer. Ms. Givens, Virginia Society of Oral and Maxillofacial Surgeons, said that AAOMS does provide an OMS with a certificate that verifies membership in the organization.

The Committee agreed to add wording in 18VAC60-20-110(A) and (D) that an OMS shall post a certificate issued by AAOMS for consideration by the Board on September 9, 2011.

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18VAC60-20-110(H)(2) – Ms. Reen stated she was asked if providing the emergency number to a hospital would meet the requirements of this section.

After discussion, it was agreed to add after the word **"number"** the

words **"for the dental practice."**

18VAC60-20-120(A) – Ms. Yeatts will add the same language about posting the AAOMS certificate that is used in 18VAC60-20-110(A) and (D).

18VAC60-20-120(C)(1)(c) – Ms. Yeatts stated that if a dentist were self-certified in anesthesia and conscious sedation prior to January 1989, a temporary permit will be issued for one year until a dentist can receive additional training or provide documentation to the Board that meets the requirements for the applicable permit.

Ms. Reen stated that the Board has to be cautious about issuing a permit without factual evidence to show qualifications. Ms. Yeatts said there is no provision for a dentist to be "grandfathered in" to qualify for the permit. The dentist would have to meet the same standards as set forth for anyone applying to obtain the permit to ensure that the best interest of the public is served.

Ms. Reen suggested that the Committee could change the temporary permit timeframe from one year to two years to allow a dentist time to provide proof of continuing education requirements for the standard permit.

Dr. Gokli moved to change the temporary permit from one-year to two years. The motion was seconded and passed.

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18VAC-60-20-120(G) - Ms. Yeatts will add the same language about posting the AAOMS certificate that is used in 18VAC60-20-110(A) and (D).

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18VAC60-20-120(I)(11) – Dr. Hall stated that he received telephone calls about whether an electrocardiographic monitor is necessary to have as a part of the required emergency equipment. He indicated that the consensus from the people he talked to was that it is better to be more cautious and have it as a part of the emergency equipment.

The Committee agreed to retain 18VAC60-20-120(I)(11) as part of the emergency equipment.

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18VAC60-20-120(K)(2) – Ms. Yeatts stated that after the word **"number"** the words **"for the dental practice"** will be added to

conform to the change made to 18VAC60-20-110(H)(2).

Dr. Gokli moved that the Committee recommend to the Board adoption of the Emergency Regulations for Dental Permits in General Anesthesia/Deep Sedation or Conscious/Moderate Sedation as amended. The motion was seconded and passed.

RESPONSE TO PETITIONS FOR RULEMAKING ON RADIATION COURSES:

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Ms. Yeatts reported that on June 3, 2011, the Board adopted regulations on radiation certification and Guidance Document 60-20 in response to the three petitioners' requests. She said the comment period on the petitions did not close until June 22, 2011 so the Board could not officially respond until now. Dr. Hall asked if individuals with certificates of completion from the programs that had been approved by the Board previously could still take x-rays. Ms. Reen responded yes but that it is stated in the regulation. Ms. Yeatts recommended that Guidance Document 60-20 be amended at this time, and the amendment can be made to the regulation during regulatory review.

Dr. Hall moved to recommend to the Board amendment of Guidance Document 60-20 to add a paragraph that anyone that met the requirements of 18VAC60-20-195 before March 11, 2011, is still qualified to place or expose dental x-ray film. The motion was seconded and passed.

Ms. Yeatts stated she would draft the specific language for presentation to the Board.

DENTAL LABORATORY WORK ORDER FORMS:

Ms. Reen informed the Committee that the initial drafts of two forms to be prescribed by the Board were reviewed at the December 3, 2010 meeting. At that time, the Board requested that the Committee develop the forms to make clear the intent is to prescribe the minimum content required by the Board and to consider whether the forms should be issued as a guidance document.

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The Committee agreed to amend the Dental Laboratory Work Order Form as follows:

- In the first paragraph at the top, line 2, bold the sentence **"A licensee may use a different form only if all the required information on this form is collected and conveyed."**
- At the bottom of the form, add a heading above the word **"Laboratory"** in bold print that says **"Instructions to Lab"**.

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The Committee agreed to change the Dental Laboratory Subcontractor Work Order Form as follows:

- in the first paragraph at the top, line 3, bold the sentence: **"A different form may be used only if all the required information on this form is collected and conveyed."**
- At the bottom of the form, add a heading above the word **"Subcontractor"** in bold print that says **"Instructions to Lab"**.

The Committee questioned if it would be a violation if a dentist did not provide and use the forms. Ms. Reen stated that the forms are required by §54.1-2719 of the Code of Virginia so a dentist could be disciplined for failing to meet the content requirements. Ms. Reen asked if these should be issued as a guidance document. Ms. Yeatts said they could just be issued as forms. The Committee asked that an explanation of the requirement for the use of the forms be mentioned in the next edition of BRIEFS.

Dr. Hall moved to recommend to the Board that the Dental Laboratory Work Order Form and Dental Laboratory Subcontractor Work Order Form as amended be adopted for use by its licensees as required by §54.1-2719 of the Code of Virginia. The motion was seconded and passed.

AMENDMENT OF GUIDANCE DOCUMENT 60-13:

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Ms. Reen explained that an amendment is needed in Guidance Document 60-13 to be consistent with current regulations. Dr. Hall moved to amend item number 6(a) after the word **"anesthesiologist"** by adding the words **"or a qualified dentist."** The motion was seconded and passed.

DISCUSSION OF THE GUIDANCE DOCUMENT FOR RECOVERY OF DISCIPLINARY COSTS:

Ms. Reen said that the regulations for Recovery of Disciplinary costs require a guidance document to address the fees to be assessed. She asked the Committee to begin development of the document with the goal of recommending adoption at the Board's December 2, 2011 meeting. She then asked for discussion of draft she had prepared. The Committee and staff discussed how the costs would be calculated if a respondent were found guilty of some of the allegations, but not for all that were cited. Ms. Reen explained that when the Enforcement Division conducts an investigation, they have no idea what the Board's decision will be in the case. Time is invested to get the information asked for by the Board. She stated that the costs will be a part of the order or consent order issued to the respondent. She reiterated that whatever process the Board uses to determine the costs, there must be consistency in collecting costs that will be incurred in investigating and monitoring a licensee.

Ms. Reen noted the Board of Dentistry is the pioneer for implementing this process in the Department of Health Professions. Some states charge costs based on proceedings, but those are not included in the Board's statute. Ms. Reen agreed to research how other states recover costs.

The Committee discussed concerns that a probable cause reviewer may consider the costs that might be imposed in making a decision and asked if they would know the costs. Ms. Reen answered yes and explained that the costs would be known generally because the Board has to adopt the guidance document. She also stated that the job of a probable cause reviewer is to find if a violation has occurred. She further stated that a reviewer should not consider costs, that each reviewer is responsible for consistency and fairness. Dr. Hall stated that proportionality of investigation costs to the conclusions of law has to be part of the consideration when making a determination about the appropriate costs.

The Committee reviewed the proposed worksheet on Page P49 and agreed to Ms. Yeatts recommendation of having a chart for investigation costs and one chart for monitoring. She informed the Committee that there are about 75 orders entered a year by the Board. She further stated that the financial return is likely to be minimal, so the Board may have to decide if this is a viable way for the Board to proceed to recover costs. Any order issued by the Board will have to specify the costs being recovered. Ms. Reen recommended including a base administrative cost.

Dr. Hall suggested that there should be an average fixed amount, maybe $100 for 1 to 2 courses as illustrated on Page P48.

Dr. Gokli suggested that it should remain simple and start small similar to when the Sanction Reference Point study was initially implemented.

Ms. Reen stated that she would develop a one-sheet document that is consistent for everybody since it becomes a part of the order. A future meeting for the Committee will be planned so the document can be reviewed.

Ms. Reen reiterated about consistency in whatever document is developed. Since it is a part of the order, it can be appealed to Circuit Court. She added that any litigation of a case would cost more than the amount which might be recovered in fees.

Dr. Petticolas requested that a history of cases that have gone to Circuit Court be provided to the Committee at its next meeting.

DISCUSSION OF THE GUIDANCE DOCUMENT ON ADVERTISING:

Ms. Reen informed the Committee that she and Dr. Boyd have discussed the content for the requested guidance document on adverstising and have received questions from Dr. Dickinson of the Virginia Dental Association that might be used in a Q & A format. Ms. Reen plans to review the questions with Mr. Casway before drafting a proposal for Committee discussion. Ms. Reen asked the Committee members to provide her with any questions they have been asked about advertising and she will put them forward for discussion.

Dr. Gokli questioned how it was possible for medical spas to advertise about teeth whitening without having a dentist present. Ms. Reen responded that it depends on what transpires between the person receiving the treatment and the person providing the treatment and whether it is considered the practice of dentistry. She stated that the Board has no jurisdiction over unlicensed practice so if there is a possible violation, the matter would be referred to the Commonwealth Attorney's Office.

NEXT MEETING:

The proposed date of the next meeting is October 21, 2011 at 9:00 a.m.

ADJOURNMENT:

Dr. Boyd adjourned the meeting at 5:15 p.m.

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Herbert R. Boyd, III, D.D.S, Chair

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Sandra K. Reen, Executive Director

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Date

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Date