

APPROVED

**BOARD OF DENTISTRY
MINUTES OF REGULATORY-LEGISLATIVE COMMITTEE MEETING
February 11, 2005
Department of Health Professions
Richmond, Virginia**

- CALL TO ORDER:** A meeting of the Virginia Board of Dentistry's Regulatory – Legislative Committee was called to order at 9:09 a.m.
- PRESIDING:** Edward P. Snyder, DDS., Chairperson
- MEMBERS PRESENT:** Michael J. Link, DDS
Jacqueline Pace, RDH
James Watkins, DDS, Ex -officio
- BOARD MEMBERS ABSENT:** Millard Stith, Jr.
- OTHER BOARD MEMBERS PRESENT:** Harold Seigel, DDS
Misty Sissom, RDH
- STAFF PRESENT:** Sandra K. Reen, Executive Director
Howard Casway, Senior Assistant Attorney General
Elaine Yeatts, Senior Policy Analyst
Cheri Emma-Leigh, Operations Manager
- QUORUM:** With four members present, a quorum was established.
- PUBLIC COMMENT:** None.
- APPROVAL OF MINUTES:** On a properly seconded motion by Dr. Link, the Committee approved the Minutes of the Regulatory-Legislative Committee Meeting of September 9, 2004.
- REPORT ON LEGISLATION AND REGULATIONS:** **Legislative Update:** Ms. Yeatts distributed a summary of 2005 legislation relating to the Board of Dentistry and reported the following:
- **HB 1556 Indigent care; physicians providing services without charge immune from liability:** This bill will require the Board of Medicine to notify licensees that practitioners who accept patients on referral from free clinics are covered by the Division of Risk Management and their immunity from civil liability. Ms. Yeatts suggested the Board might also want to notify its licensees in an upcoming

newsletter.

- **HB 2237 Practitioner Self-Referral Act; exemption:** This bill amends the practitioner self-referral law in Virginia to exempt a referral that is made to a practitioner within his immediate family when the referral is made to a duly qualified practitioner. The Committee asked Mr. Casway to review this law and to clarify its contents at the April board meeting.
- **HB 2368 Dentists and dental hygienists; licensure and continuing education:** This is the bill introduced by the Board of Dentistry. It has been amended as a substitute and is now identical to SB 1127, the bill introduced by the Virginia Dental Association (“VDA”). Ms. Reen explained that negotiations between the Department of Health Professions and the VDA accomplished the substitute bills. The changes agreed to in the Board’s bill included keeping “*had reason to believe*” in § 54.1-2706.6; the addition of “(v) *has been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section*” in § 54-2709.C; and adding “*Attest on a form provided by the Board that he will not*” in §54.1-2712.1(B)(3).
- **HB2429 Prescription Monitoring Program; includes reporting by out-of-state dispensers.** Ms. Yeatts explained this bill is a major expansion of the prescription monitoring program, which is currently a pilot program in the western and southwestern part of the state that requires all Schedule II drugs that are dispensed to be reported to an automated system. This bill would expand the program state-wide and include Schedule III and IV drugs and will require reporting by non-resident pharmacies that ship drugs into Virginia and will give dispensers and pharmacists access to information in the system to determine if they have a valid prescription and whether a patient is doctor-shopping for prescriptions.
- **HB 2512 Assisted living facilities; requires**

administrators to be licensed. Ms. Yeatts stated this is a major new bill for the Department of Health Professions, which will reconstitute the Board of Nursing Home Administrators to include the licensure of Assisted Living Facility Administrators and change the Board's name to the Board of Long Term Care Administrators. This bill will also require registration of medication aides.

Other bills noted were:

- HB 2515 Medical records; charge for copies distinguished between patient request & subpoenaed records.
- HB 2516 Health records; revises certain provisions for privacy of minors.
- HB 2524 Drug Control Act; definitions of compounding and dispense.
- HB 2659 Service of process; plaintiff must have an expert witness, expressions of sympathy inadmissible.
- HB 2716 Controlled substances; additions and deletions to Schedule I and II list.
- HB 2804 Health care practitioners; immunity for making voluntary report regarding conduct or competency.
- HB 2831 Clinical drug trials; publication of certain data.
- SB 1178 Prescription drugs; increases penalty for counterfeiting.

Emergency Regulations: Ms. Reen advised that once HB 2368 becomes law, the Committee will need to craft emergency regulations to be implemented within 280 days of its enactment.

Periodic Review Regulations: Ms. Yeatts stated that the Committee needs to look at the comments received and decide whether to recommend to the Board any additional changes to be adopted at the Board meeting on April 15, 2005. The Virginia Dental Hygienists Association requested that the definition of "local anesthesia" be amended to delete the words "topically applied." Ms. Sissom, R.D.H., requested that local anesthesia be defined as "a loss of sensation in a circumscribed area of the body caused by a depression of excitation in nerve endings or an inhibition of the conduction process in peripheral

nerves.” After discussion and on a properly seconded motion by Dr. Link, the Committee voted 4-0 that no changes would be recommended to the Board.

**COMMITTEE
DISCUSSION:**

Expanded Duties for Dental Assistants: Ms. Reen provided the statutes, regulations and background information from Vermont and Kansas as they relate to Certified Dental Assistants (“CDA”) performing expanded duties, as well as information on educational programs for dental assistants offered in Virginia.

After reviewing this information, the Board discussed the Dental Assisting National Board (“DANB”) requirements for certification and the fifteen (15) continuing education hours required per year in order to maintain certification.

The Committee discussed supragingival scaling and packing and carving amalgams as possible expanded duties. Requiring DANB certification and completion of a program on expanded duties at an accredited school recognized by the Commission on Dental Accreditation of the American Dental Association were discussed as the minimal qualifications that might be required to permit expanded duties. The sense of the committee was that a qualified assistant might be permitted to use a cavitron but not hand scalers and that expanded duties should only be performed under the direct supervision of the dentist.

On a properly seconded motion by Dr. Watkins, the Committee voted 4-0 in favor of recommending to the Board to begin the Notice of Intended Rule Making process regarding expanded duties. Ms. Reen advised that she would obtain information about the VDA, VDHA and VDAA workgroup addressing expanded duties.

Use of the “M.D. Credential”. Mr. Casway explained that the credential “M.D.” is to be used professionally only when the person is licensed by the Board of Medicine as its use represents oneself to the public as being qualified to provide medical treatment.

Use of Specialty Credentials. Ms. Reen explained Dr. Supan’s letter was referred to the Committee following discussion at the April 9, 2004 Board meeting and noted that the Board’s regulation, 18 VAC 60-29-180, requires a

licensee to either disclose that he is a general dentist offering services in a specialty area or have obtained certification in the specialty. After discussion the Committee found that the regulations were adequate. Ms. Reen was asked to advise Dr. Supan that the Board will investigate any specific complaints.

Medicinal Use of BOTOX. Ms. Reen noted that the Board referred this matter to the Committee at its November 19, 2004 meeting. She stated that the use of BOTOX for cosmetic purposes is restricted to oral and maxillofacial surgeons in Board regulations but that its medicinal use is not addressed. After discussion, the Committee agreed a dentist is not prohibited from using BOTOX to treat dental conditions, such as Temporomandibular Joint Disease and Fibromyalgia and further agreed that such use should only occur when the dentist has had adequate training in its use for the intended treatment. Staff was advised that the question of appropriate use would be addressed based on a complaint and the facts of a case.

Teeth Whitening/Practice of Dentistry. Ms. Reen reported that the FDA sent out a letter in 1991 to producers of teeth whitening products advising them that they were marketing those products at their own risk as they were considered drugs that had not gone through the FDA review process. In 2002, the FDA stated in response to litigation that they would reconsider if teeth whitening products are a drug or a cosmetic. No further information is available from the FDA.

Ms. Reen asked the Committee to consider how commercially available self administration products have become and to provide guidance on when complaints about non-licensees advertising and providing teeth whitening services merit investigation. Mr. Casway advised that the probable threshold for having someone prosecuted for unlicensed practice would be that the customer was harmed by the unlicensed person. After discussion, the Committee advised that all complaints about teeth whitening services by an unlicensed person should be investigated and decided by the Board on a case-by-case basis.

Definition of “direction”. Dr. Link explained that the Board at its January 21, 2005 asked the Committee to consider amendment of the definition for purposes of clarity. After discussion the Committee decided to address the definition in context to developing regulations on allowing expanded duties for dental assistants.

Taking Impressions for Master Casts. Dr. Link explained that the task of taking impressions for master casts might be a task to include as an expanded duty for dental assistants. The Committee agreed.

Dental Office Inspection Form: Ms. Reen advised the Committee the form is being revised as discussed at the January Board meeting. She asked if the revised form should be brought to the Committee before being presented to the Board for adoption as a guidance document. It was decided that the Committee would review the form prior to its submission to the Board.

The next meeting of the Regulatory/Legislative Committee was scheduled for April 13, 2005 at 6:00 p.m.

ADJOURNMENT

With all business concluded, the Committee adjourned at 2:20 p.m.

Edward P. Snyder, Chairperson

Sandra K. Reen, Executive Director

Date

Date