

TIME & PLACE: This meeting of the Virginia Board of Dentistry was called to order at 9:03 am, on December 13, 2019 at the Perimeter Center, 9960 Mayland Drive, in Board Room 4, Henrico, Virginia 23233.

PRESIDING: Augustus A. Petticolas Jr., D.D.S., President

MEMBERS PRESENT: Sandra J. Catchings, D.D.S., Vice President
Nathaniel C. Bryant, D.D.S., Secretary
Patricia B. Bonwell, R.D.H., PhD
Jamiah Dawson, D.D.S.
Perry E. Jones, D.D.S.
Mike Nguyen, D.D.S.
Tammy C. Ridout, R.D.H.
James D. Watkins, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
David Brown, D.C., DHP Director
Barbara Allison-Bryan, MD, DHP Chief Deputy Director
Elaine J. Yeatts, Senior Policy Analyst
Jamie C. Sacksteder, Deputy Executive Director
Kathryn E. Brooks, Executive Assistant

COUNSEL PRESENT: James E. Rutkowski, Assistant Attorney General

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

Ms. Reen read the emergency evacuation procedures.

PUBLIC COMMENT: Dr. Petticolas explained the parameters for public comment and opened the public comment period.

Misty Mesimer, RDH (Germanna Community College - GCC) addressed her petition for rulemaking to amend the definition of "Dental Assistant I" to require certification in infection control procedures and in radiation health and safety. She said the Dental Assisting National Board (DANB) currently offers the National Entry Level Dental Assistant (NELDA) examination and the proposed certification. She stated GCC's dental assisting program is accredited and includes a minimum of 11 hours of study on microbiology, modes of disease transmission, infection control protocols, aseptic technique, sterilization and disinfection, and personal

protection. Ms. Mesimer urged the Board to ensure dental assistants meet a minimum standard of competency in infection control and radiation exposure to protect dental patients.

Heather Fonda, CDA_(Germanna Community College) spoke in support of the petition to require dental assistants to be certified in infection control and radiology by completing the NELDA examination before they are allowed to practice in Virginia.

**APPROVAL OF
MINUTES:**

Dr. Petticolas asked if there were any corrections to the three sets of draft minutes. Hearing none, Dr. Catchings moved to approve the minutes as presented for the two Formal Hearings held on September 12, 2019 and the Board Business Meeting held on September 13, 2019. The motion was seconded and passed.

**DEPARTMENT OF
HEALTH
PROFESSIONS
REPORTS:**

Dr. Brown addressed the success of the Department's October 7, 2019 Board Member Training, which received an overall rating by attendees of 4.5 stars out of a possible 5. He also stated his continuing commitment to providing training for board members and agency staff. He then talked about the changes in the composition of the General Assembly and noted the changes include the addition of a second dentist. He said the major issues to be addressed in the 2020 Session include gun control, voting rights and the biennial budget. He added that the Department has only one bill in the upcoming Session. He also noted his appreciation for having several health professionals serving in the General Assembly.

Dr. Allison-Bryan explained the importance of security and said board members should "expect the check" when entering the Perimeter Center as agencies in the building implement recommended security measures. She said the board members' temporary badges allow entrance to the building and second floor. She added that members who enter the building without their temporary badge must sign in with security. She reinforced the importance of every person swiping his or her badge when entering the building from the west side parking lot. She said "panic buttons" will be provided soon to alert security personnel of any emergency that occurs during a meeting.

**LIAISON AND
COMMITTEE
REPORTS:**

Dr. Watkins gave the following reports:

- The **Southern Regional Testing Agency** has decided to continue

giving dental and dental hygiene exams and exam booklets are being updated for 2020.

- The **Board of Health Professions** received information about legislation passed in Michigan that eliminates health profession boards and establishes an umbrella agency to address cases. Dr. Brown confirmed this is a national trend and said Idaho is proposing legislation to deregulate health professions.
- The draft **Exam Committee** minutes are in the agenda package for review; no action is needed today.

Dr. Bryant reported on his participation in the **Commission on Dental Accreditation's** site visit to the Dental Hygiene Program at Germanna Community College; explaining he could not provide specific information due to a confidentiality agreement. He said the results of the review would be evident in a matter of months. In response to Dr. Catchings's question, he said GCC offers a dental assistant program and a dental hygiene program.

Dr. Petticolas and Dr. Catchings reported on the **AADB's 136th Annual Conference**. Dr. Catchings said the conference was a disappointment due to the manner in which the organization conducted business. She described the questionable voting process for officers; noting one candidate was an attorney who represents clients in lawsuits against Boards of Dentistry. She added that she was told the AADB would be contacting Ms. Reen about excluding Virginia board members from future meetings if the state level membership isn't paid.

Dr. Petticolas agreed with Dr. Catchings' comments then explained his experience of staying an extra day to attend a meeting AADB scheduled with the testing agencies. He said this meeting was advertised as being open then suddenly it was closed and he wasn't allowed to observe. He added that the public session that followed was very brief with no disclosure on the discussion in the closed meeting. He said the only value of this organization is the ability to network with members of other state dental boards. He recommended postponing a decision on continued membership until the next meeting is announced.

Discussion of the AADB included the following. Dr. Watkins noted that another value of the AADB is that it has representatives on many of the ADA's commissions. Dr. Brown added that dentistry is the only health

profession that does not have a functional national organization. He stressed the importance of a continued presence to know what is happening in this organization and questioned the possibility of creating a vibrant organization in the future. Ms. Reen explained the AADB's two levels of membership, noting that the state level membership does not provide a voice in the organization; only individual members who are present at the meetings have voting privileges. She added that individual membership is open to any current or former board member.

Ms. Ridout said the **Regulatory-Legislative Committee** discussed the definition of dentistry then formed a subcommittee to propose language for the definition to include A1C testing. She stated the Committee will meet on February 28, 2020.

Dr. Dawson thanked the Board for asking her to participate in the **VCU Digital Dentistry Symposium** and referenced her summary of events included in the agenda.

**LEGISLATION AND
REGULATION:**

Ms. Yeatts noted that the General Assembly convenes the second Wednesday in January. She then updated information in the Regulatory Action Chart, indicating the emergency regulation for obtaining a waiver for e-prescribing went into effect on December 2, 2019. She added that the comment period for the final regulation is open from December 23, 2019 through January 22, 2020. She then addressed the following subjects:

Blanchard Petition for Rulemaking: Ms. Yeatts explained the petitioner's request is to remove the requirement that a dentist be physically in the office to supervise dental hygiene services which would require elimination of the provisions for indirect supervision. She reported that the Regulatory-Legislative Committee reviewed the petition and recommended that the Board take no action. Dr. Catchings moved to accept the Committee's recommendation to take no action. The motion was seconded passed.

Practice by Public Health Dental Hygienists under Remote Supervision: Ms. Yeatts advised that these regulations are identical to the emergency regulations for remote supervision of dental hygienists practicing in the Virginia Department of Health and in the Department of Behavioral Health and Developmental Services. She reported no

comments were received on this action. Dr. Watkins moved to accept the regulations as proposed. The motion was seconded and passed.

Change in Renewal Schedule: Ms. Yeatts reviewed the proposed regulations for changing the renewal schedule to birth months, noting that this draft is an amendment from the original proposal. She reviewed the comments received both in favor and opposed and noted that no one appeared at the public hearing held on October 18th. Due to the length of time this action was under review, she recommended changing the year the renewal schedule will change from the year 2020 to 2021 throughout the proposal. Dr. Catchings moved to adopt the proposal as amended. The motion was seconded. Ms. Ridout questioned changing the year in the dental hygienist and dental assistant regulations. Ms. Yeatts and Ms. Reen agreed the proposal should be 2021. At Dr. Petticolas's request, Ms. Reen explained that currently, all renewals are processed in February and March and the proposed change will reduce the number of licensees affected when mail is lost in the postal system or delayed due to production issues. Dr. Catchings suggested that in the future consideration be given to enabling licensees to print their license renewals. Dr. Petticolas called for a vote on the pending motion to change the renewal schedule. The motion passed.

Returned Check Fee: Ms. Yeatts reported the Office of the Comptroller advised DHP to increase this fee from \$35 to \$50 to comply with the Virginia Debt Collection Act, which is most recent statutory requirement. Dr. Watkins moved to amend the regulation as proposed. The motion was seconded and passed.

Consideration of Guidance Documents: After requesting that these guidance documents be addressed in one motion, Ms. Yeatts briefly explained the proposed changes to:

- 60-3, Periodic Office Inspections for Administration of Sedation and Anesthesia, noting that the blue highlighted sections are still under discussion and only the yellow highlighted sections should be included in the motion.
- 60-4, Questions and Answers about Sedation, the changes highlighted in yellow reflect current regulatory language.
- 60-17, Policy on Recovery of Disciplinary Costs, the changes highlighted in yellow update the costs.

- 60-23, Policy on Teledentistry, needs to be readopted without any changes.

Dr. Catchings moved to adopt these documents as presented. The motion was seconded and passed.

Ms. Yeatts said the Virginia Dental Hygienist Association had concerns about Guidance Document 60-13, **Practice of a Dental Hygienist under Remote Supervision**. She presented an updated draft with new language addressing the settings that qualify as a dental practice physically located in Virginia to include the places that remote supervision can be practiced. Dr. Bonwell moved to accept all the proposed changes, including the changes made after the Regulatory-Legislative Committee met. The motion was seconded and passed.

Dr. Petticolas took a moment to formally introduce Dr. Nguyen and thank him for accepting the request to serve, to which Dr. Nguyen replied that he felt honored and privileged to do so.

**BOARD DISCUSSION/
ACTION:**

Dr. Petticolas asked for discussion of the comments received.

Ms. Ridout moved to assign the petition to change the definition of the term “dental assistant I” to the Regulatory-Legislative Committee for discussion. The motion was seconded and passed.

Dr. Petticolas stated that the comments addressing remote supervision were addressed in Guidance Document 60-13 and the comment from SRTA was received as information. He then asked how the comment and material received from AAOMS should be addressed. Dr. Catchings moved to refer the comment to the Regulatory-Legislative Committee. The motion was seconded and passed.

Dr. Petticolas called for discussion of the **Clinical Competency Examination Requirements**. Dr. Watkins reported staff is gathering information on the definition of the term “clinical” so the Exam Committee can expand the regulatory requirements for an acceptable clinical competency exam.

Dr. Petticolas asked staff to establish a Regulatory Advisory Panel to discuss digital dentistry. Dr. Dawson agreed to serve as Chair and Dr. Nguyen agreed to serve as a member. Ms. Reen said experts on this

topic will be included, and noted that the VCU School of Dentistry will be contacted to contribute to the discussion.

**DEPUTY EXECUTIVE
DIRECTOR'S
REPORT:**

Ms. Sacksteder reviewed the **Disciplinary Board Report** on case activity from January 1, 2019 through November 30, 2019; giving an overview of the actions taken and a breakdown of the cases closed with violations. Dr. Petticolas asked about the number of cases closed with unlicensed activity violations and how these numbers compared to 2018 and 2017 case activities. Ms. Sacksteder replied she did not make note of those cases when preparing the report on 2019 actions and said she would provide this information in a future report.

**EXECUTIVE
DIRECTOR'S
REPORT:**

Ms. Reen said one of the duties of staff is to facilitate consistency across Board members in reviewing cases for probable cause. She passed out a photograph of a patient's mouth, which she asked the Board to discuss. She said a calibration exercise was attempted previously and that exercise entailed having each board member review and do a probable cause sheet on the same case. She said that exercise did not achieve the needed discussion so she thought focusing on a photo might be a good option to try. Dr. Petticolas asked the members to describe what they saw in the photo. Discussion followed about the information needed to make a decision. To facilitate further discussion, Dr. Petticolas asked the Board to assume the photo shows a crown with an open margin. Following further discussion of what stage in the treatment process the photo was taken and the possible causes for the darkened area, Dr. Petticolas asked for discussion of the darkened area as an open margin assuming the crown was placed three months ago by a dentist and the photo was taken by a subsequent dentist. There was general but cautious agreement that, if the darkened area was a defect in a crown, correction was needed and the defect would be considered a violation of the acceptable standard of care. Dr. Petticolas posed a second scenario wherein the patient left the dental practice with this crown in place; then returned to the dentist in 2 weeks because of pain in the area of the crown; and the dentist said nothing was amiss. Ms. Reen asked for discussion of the appropriate sanction in this scenario. During the discussion, Dr. Allison-Bryan said the Board's sanction reference points could help decide sanctions and described the Board of Medicine's process for case review and addressing uniformity in sanctions. Ms. Sacksteder said the purpose of the exercise is to foster critical thinking skills and that more information can be requested if it is needed to make

a determination. Following further discussion, it was generally agreed more information was needed to reach a consensus on the appropriate sanction.

Ms. Reen asked for suggestions for future calibration exercises. There was consensus that a written case summary would be better than a photograph or a full case. Ms. Sacksteder requested more detailed explanations of the findings in a case in layman's terms to support development of notices. Dr. Petticolas concluded the exercise by thanking everyone for their participation and noted that there will be more of these exercises in the future.

ADJOURNMENT: With all business concluded, the Board adjourned at 11:39 AM.

Augustus A. Petticolas Jr., D.D.S.
Augustus A. Petticolas Jr., D.D.S., President

March 13, 2020
Date

Sandra K. Reen
Sandra K. Reen, Executive Director

March 13, 2020
Date