

VIRGINIA BOARD OF DENTISTRY
BOARD BUSINESS MEETING

PERIMETER CENTER, 9960 MAYLAND DRIVE, SECOND FLOOR CONFERENCE CENTER, HENRICO, VA 23233

<u>TIME</u>		<u>PAGE</u>
9:00 a.m.	Call to Order – Dr. Nathaniel C. Bryant, President	
	Public Comment – Dr. Bryant	1-3
	<ul style="list-style-type: none"> • American Association of Orthodontists-Trey Lawrence 	
	Approval of Minutes	
	<ul style="list-style-type: none"> • September 10, 2021 Business Meeting • September 10, 2021 Formal Hearing 	4-8 9-10
	DHP Director’s Report – David E. Brown, MD	--
	Liaison & Committee Reports	
	<ul style="list-style-type: none"> • Ms. Lemaster and Dr. Dawson – Report on Annual Meeting of the Council of Interstate Testing Agencies (CITA) 	11-12
	<ul style="list-style-type: none"> • Dr. Bonwell, Chair – Report on Regulatory-Legislative Committee Meetings ○ Requests that staff research other states legal provisions on sleep apnea testing, home sleep tests, and polysomnography tests ○ Proposes establishing a Regulatory Advisory Panel to discuss in-person examinations of patients receiving active appliances 	13-16
	Legislation, Regulation and Guidance - Ms. Yeatts	
	<ul style="list-style-type: none"> • Status Report on Regulatory Actions Chart • Proposed Guidance Document 60-27 on Sedation Inspections and Permits • Proposed Update Guidance Document 60-7 on Delegation to Dental Assistants • Proposed Policy on Meetings Held with Electronic Participation 	17 18-20 21-22 23-28
	Board Discussion Topics	
	<ul style="list-style-type: none"> • Consideration of Public Comments • Discussion of Dental Assistants Using Scalers • Policy on Recovery of Disciplinary Costs (Guidance Document 60-17) 	-- 29-30
	Board Counsel Report – Mr. Rutkowski	
	<ul style="list-style-type: none"> • Prescribing antibiotics without a DEA license 	--
	Deputy Executive Director’s Report – Ms. Sacksteder	31-32
	<ul style="list-style-type: none"> • Disciplinary Report 	
	Executive Director’s Report – Ms. Reen	--

Board Membership – Insights and Discussion

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- Information Needs
- Board Meetings
- Special Conference Committees
- Policy Committees
- Staff Support

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SEP 21 2021

Virginia Board of Dentistry

DHP – MAILROOM

SEP 21 2021

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September 13, 2021

Virginia Board of Dentistry
Attention: Sandra Reen
9960 Mayland Dr.
Suite 300
Henrico, VA 23233-1463

Dear Members of the Virginia Board of Dentistry:

I am writing to inform your dental board about **two resources regarding teledentistry that have been recently released** by the American Association of Orthodontists (AAO). As you are likely aware, the topics of teledentistry and “direct-to-consumer” orthodontic treatment have garnered a great deal of attention from state dental boards and state legislatures over the past few years. It goes without saying that the COVID-19 pandemic has only increased interest in teledentistry, and telehealth generally. The AAO strongly supports the incorporation of teledentistry components into orthodontic treatment, **so long as** patient health and well-being are sufficiently protected.

The AAO’s two new resources, copies of which are enclosed herewith, are “Legal, Ethical, and Clinical Concerns with Common Components of a Direct-to-Consumer Orthodontic Treatment Model: A Position Paper of the American Association of Orthodontists,” and “The Challenges of Informed Consent in Orthodontic Treatment Provided Solely through Asynchronous Teledentistry.” The AAO invites and encourages you and your dental board to use these two new publications as a resource as you consider the implications of expanded uses of teledentistry within the dental profession as a whole, and the orthodontic specialty in particular.

The position paper “Legal, Ethical, and Clinical Concerns with Common Components of a Direct-to-Consumer Orthodontic Treatment Model” sets out the scientific evidence and authorities underlying and supporting the AAO’s concerns with common practices in direct-to-consumer orthodontic treatment. For several years now, the AAO has advocated for certain protections to be required by law when utilizing teledentistry for orthodontic treatment. These protections include requiring an in-person examination of the patient before orthodontic treatment begins; requiring radiographic imaging (x-rays) before orthodontic treatment begins; and requiring that a patient be provided the name, license information, and contact information for the dentist or orthodontist supervising his or her treatment.

In the new position paper, the AAO sets out the abundant scientific evidence and literature supporting these concerns. The AAO was careful to only include citations from reputable, trustworthy sources (peer-reviewed studies from recognized journals in the dental field). (Some who advocate against regulations on teledentistry frequently cite sources that appear to be reliable, but in fact do not meet the commonly-accepted standards for scientific reliability.) The topics covered by this position paper include the following:

- The complexity of the biological processes involved with the movement of teeth during orthodontic treatment;
- Dispelling the myth that the movement of teeth is “just a cosmetic” procedure;
- The significant effects that moving even just the front teeth can have on alignment of the bite and oral functions (chewing, speaking and jaw movement);
- The importance of an in-person examination before beginning orthodontic treatment, and why essential components of that exam cannot be performed through teledentistry;
- The crucial significance of performing periodontal assessment and probing (which can only be done in-person) before beginning orthodontic treatment;
- Why x-rays and other radiographic imaging are essential before beginning orthodontic treatment;
- A data-based analysis of why the clear value of radiographic imaging for orthodontic diagnosis and treatment far outweighs the minimal risk associated with such imaging;
- Why teledentistry cannot replace essential components of in-person orthodontic treatment;
- Limitations on the use of clear aligner therapy, particularly in a context where the patient is not seen in-person; and
- Why in-person examinations and radiographic imaging should continue during the course of orthodontic treatment, and the significant risks of failing to do so.

It is the AAO’s intention that the scientific sources and evidence compiled in this position paper will be utilized by dental boards and state legislatures as support for legislation and regulations on teledentistry that better protect orthodontic patients through quality access to care.

In “The Challenges of Informed Consent in Orthodontic Treatment Provided Solely through Asynchronous Teledentistry,” the AAO relies on respected authorities (such as the American Medical Association, the Joint Commission and court decisions) in raising concerns about whether informed consent exists when an orthodontic patient never has an opportunity to speak directly with the dentist or orthodontist. In a number of “direct-to-consumer” orthodontic treatment options on the market currently, “interaction” between doctor and patient is only through asynchronous teledentistry—that is, teledentistry where electronic records are transmitted between doctor and patient, but there is never any live, face-to-face interaction.

The authorities cited in the AAO’s new informed consent resource raise serious doubts about whether a patient can give effective informed consent when the patient never has an opportunity to ask their doctor questions. These authorities frequently make the point that “informed consent is not a form; it is a process” of interaction between doctor and patient. The Joint Commission (the accrediting and certifying body for more than 22,000 health care organizations in the United States) summed up these concerns well in recommending,

Ensure that informed consent is truly informed by making sure that the patient understands what they are consenting to undergo. Do not assume that patients understand the medical terms in the consent form. A consent form alone is not sufficient for informed consent.¹

If the only “informed consent” given by an orthodontic patient is an online form in which the patient clicks a box, and no direct interaction between doctor and patient occurs, the sources cited in the AAO’s new resource raise serious concerns about whether the patient has actually consented to orthodontic treatment.

I hope that these two new resources from the AAO will be helpful to you, your dental board, and board’s staff in future matters pertaining to teledentistry. You can find additional information related to these matters at www.orthofacts.org, or by emailing advocacy@aaortho.org. Please do not hesitate to contact me should you have any questions regarding these new resources, or in any instance where the AAO might be of assistance to you and your board.

Sincerely,



Trey Lawrence
American Association of Orthodontists
Vice President, General Counsel

TL:kd
Enclosures (2)

¹ The Joint Commission Division of Health Care Improvement. Informed consent: More than getting a signature. *Quick Safety!* Issue 21, February 2016 (emphasis added).

**VIRGINIA BOARD OF DENTISTRY
BUSINESS MEETING MINUTES
September 10, 2021**

- TIME AND PLACE:** The meeting of the Virginia Board of Dentistry was called to order at 9:04 a.m., on September 10, 2021 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
Patricia B. Bonwell, R.D.H., Ph.D.
Perry E. Jones, D.D.S.
Margaret F. Lemaster, R.D.H.
J. Michael Martinez de Andino, J.D.
Dagoberto Zapatero, D.D.S.
- MEMBERS ABSENT:** Nathaniel C. Bryant, D.D.S.
Sultan E. Chaudhry, D.D.S.
Jamiah Dawson, D.D.S.
- STAFF PRESENT:** Sandra K. Reen, Executive Director of the Board
Jamie C. Sacksteder, Deputy Executive Director
Donna Lee, Discipline Case Manager
Glory Milton, Executive Assistant
Lisa Hahn, Chief Operating Officer, Department of Health Professions
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
- COUNSEL PRESENT:** James E. Rutkowski, Assistant Attorney General
- ESTABLISHMENT OF A QUORUM:** With seven 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. There was no public comment.
- APPROVAL OF MINUTES:** Dr. Petticolas asked if there were any edits or corrections to any of the draft minutes included in the agenda package. Dr. Petticolas stated that on page 15 of the agenda, the paragraph after the reconvene motion of the June 11, 2021 minutes, the words "motioned to vote on" should be deleted and replaced with the words "addressed a motion by the Exam Committee to adopt"; and after the words "Dental Hygiene Clinical Exam Requirements" the remainder of the sentence should be changed to read "as proposed by the Committee". Dr. Petticolas also stated that on the same page of the June 11, 2021 minutes, under the heading "Consideration of Public Comments," second paragraph, the word "motioned" should be deleted and the words "agreed by consensus" should be added, and the last sentence of the paragraph should be deleted.

Dr. Catchings moved to approve the minutes from the June 10, 2021 Formal Hearing, June 11, 2021 Public Hearing, June 11, 2021 Business meeting as amended, and August 5, 2021 Special Session Telephone Conference Call. The motion was seconded and passed.

DIRECTOR'S REPORT:

Ms. Hahn stated she would address the Board since Dr. Brown was not present. Ms. Hahn informed the Board that the Governor's state of emergency ended on June 30, 2021; therefore, the Board is not able to conduct virtual meetings. She also stated that the agency may pursue legislation to have some virtual meetings. The current building policy requires that all who enter the building must wear masks, regardless of vaccination status. Ms. Hahn stated that 75% of DHP employees are currently teleworking. She added that Dr. Brown had previously stated that by September 1, 2021, staff should be prepared to come back to the new normal; however, that has been postponed until January 3, 2022. Dr. Brown has authorized that 50% of an employee's work time can be conducted remotely. The agency is encouraging employees to be together in the office.

LIAISON & COMMITTEE REPORTS:

- **Board of Health Professions Report** - Dr. Catchings stated that the August 13, 2021 meeting was canceled so she had nothing to report.

- **ADEX Report** – Dr. Bryant was not in attendance; however, he submitted a report for the Board to review. There were no questions from the Board.

- **CITA Update** – Ms. Lemaster stated that she and Dr. Dawson will be attending the CITA conference on October 8 and 9, 2021 in Florida.

- **Nominating Committee** – Dr. Petticolas referred the Board to the Nominating Committee minutes that listed the slate of officers for the coming year – Dr. Bryant for President; Dr. Catchings for Vice-President; and Dr. Bonwell for Secretary. Dr. Bonwell as the alternate for President and Vice-President, and Dr. Dawson as the alternate for Secretary. There were no nominations from the floor. The Board agreed by consensus to accept the slate of officers put forth by the Nominating Committee. Dr. Petticolas said the new officers will assume their positions at the end of the meeting.

LEGISLATION, REGULATION, AND GUIDANCE:

Status Report on Regulatory Actions Chart. Ms. Yeatts reviewed the updated Regulatory Actions. The following proposed regulations are currently at the Governor's Office:

- amendment to restriction on advertising dental specialties;
- technical correction to fees; and
- removal of pulp capping as a delegable task for a DAII.

She said the Board will adopt final regulations today on waivers for e-prescribing. She explained this action is necessary but moot because the authority for granting waivers expired on July 1, 2021.

She reported that the proposed regulations on training and supervision of digital scan technicians are in the Secretary of Health and Human Resource's Office and the proposed regulations on training in infection control are at the Department of Planning and Budget.

Ms. Yeatts informed the Board that she and the Director have repeatedly contacted the Governor's office about the long period of time the regulations for amendment of the restriction on advertising dental specialties and the action on making a technical correction have been pending.

Waiver on Electronic Prescribing – Ms. Yeatts stated that this is the final regulations that would replace the emergency regulations then asked for a motion. Dr. Zapatero moved to adopt the final regulations for Waiver on Electronic Prescribing. The motion was seconded and passed.

Guidance Document 60-8: Education Requirements for Dental Assistants II - Ms. Yeatts stated this guidance document has to be revised because there were changes to the regulations. She added that on page 59 of the agenda package, near the bottom under the title "Competency Exam Requirements" the 18VAC60-30-120 (a) (b) should be corrected to read "18VAC60-30-120 (B) (2)". Ms. Yeatts further stated that the guidance document would be effective November 11, 2021. Mr. Martinez moved to adopt the revised guidance document. The motion was seconded and passed.

Guidance Document 60-20: Radiation Certification – Ms. Yeatts explained this guidance document was reviewed and that no changes are needed so the Board just needs to reaffirm it. Dr. Bonwell moved to reaffirm the guidance document. The motion was seconded and passed.

Guidance Document 60-24: Dental Practices – Ms. Yeatts said there were changes in the Code of Virginia, laws and regulations; this guidance document needs to be updated to reflect those changes. Dr. Catchings moved to adopt the revised guidance document. The motion was seconded and passed.

**BOARD DISCUSSION
TOPICS:**

When a Dentist Dies Guide - Ms. Yeatts commended Mr. Martinez on the document he created pertaining to guidance on the Death or Retirement of a Dentist. She stated that Board counsel suggested to remove the Professional Liability Issues section since the Board does not provide advice in that area.

Mr. Rutkowski explained that the mission of the Board is to protect the public, and that the Professional Liability Issues section is more about providing business advice. He also stated he had some concerns about the Estate Planning section of the guidance document, but he would leave it up to the discretion of the Board on whether to remove that portion.

Dr. Zapatero questioned the need for a guidance document because he stated the burden is on the licensee regarding the dental records and not the spouse. In response to Dr. Zapatero's question, Ms. Reen explained that this issue was initially brought to the Board's attention because she receives telephone calls from family members and attorneys about 4 or 5 times a year asking what should be done with patient records following the death of a dentist. She added that there have been instances where dental records have been found in dumpsters and in garages. She said her concern is protecting the confidentiality of patient records.

After discussion, Dr. Catchings moved that the Board accept the guidance document with the removal of the second paragraph under the Professional Liability Issues section, and the Estate Planning section would remain. The motion was seconded and passed.

Dr. Catchings moved to approve the guidance document as amended. The motion was seconded and passed.

Clarification on Use of Scalers - Dr. Bonwell stated that at the last Board meeting there was discussion concerning clarification on use of scalers and the matter was referred to the Regulatory-Legislative Committee so she would defer any comments until that meeting is convened.

Prescribing Antibiotics without a DEA License - Dr. Bonwell questioned whether a dentist could prescribe antibiotics without a DEA license. Mr. Rutkowski stated that some Schedule 1-5 drugs would be regulated under Federal law and some regulated under state law, depending on the drug. Mr. Rutkowski informed the Board he would have to research the subject before providing guidance to the Board. Dr. Petticolas requested that Mr. Rutkowski provide a report to the Board at its next meeting.

Modernizing Disciplinary Case Records - Dr. Zapatero addressed the Board regarding the modernization of disciplinary case records and streamlining the disciplinary process. Ms. Hahn stated that the agency does have the capabilities to do electronic records. She stated that in her prior position at DHP as an Executive Director, she implemented the process of providing electronic records for disciplinary matters and explained there are some issues that arise, which would have to be worked out by the Board. She informed the Board that she is currently working with several boards at DHP to assist with using electronic records and she can work with Ms. Reen and Ms. Sacksteder in making the transition to electronic disciplinary case records. Since laptops would be necessary during hearings, Ms. Hahn suggested that the Board may be able to share laptops with other Boards.

Dr. Zapatero moved that the Board start the process to modernize discipline case records as soon as possible. The motion was seconded and passed.

Mr. Rutkowski stated he had nothing to report.

**BOARD COUNSEL
REPORT:**

**DEPUTY EXECUTIVE
DIRECTOR'S REPORT:**

Ms. Sacksteder reviewed the disciplinary Board report on case activity from January 1, 2021 to August 31, 2021, giving an overview of the actions taken and a breakdown of the cases closed with violations. She also provided an overview of the CDCAWREB webinar that took place on August 19, 2021.

**EXECUTIVE DIRECTOR'S
REPORT:**

AADA Update – Ms. Reen informed the Board that she has been selected to be one of the representatives to discuss dental compact in Virginia.

Staffing Update – Ms. Reen introduced Glory Milton a temporary employee who is working in the Executive Assistant position; and reported that the vacant licensing specialist position has been filled. She thanked Ms. Milton and Ms. Lee for all their work. Ms. Reen added that Board members and staff have received and addressed numerous questions about the licensing delays. She explained that since the end of June there has been a 'perfect storm' of problems preventing the timely licensure of applicants. Ms. Reen assured the Board that staff is working overtime and is receiving assistance from a licensing specialist from another board so progress on catching up is being made.

Closing Remarks - Dr. Petticolas commended Ms. Reen and all Board staff for their perseverance. He asked Ms. Hahn to relay his concern about how cumbersome the hiring process is to upper management, he then said this would be his last day of service with the Board and noted he has served on the Board for 9 years. Dr. Petticolas ended with saying he has learned a lot, that protecting the public is an awesome task, and it has been an interesting journey.

ADJOURNMENT:

With all business concluded, the Board adjourned at 10:13 a.m.

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

Sandra K. Reen, Executive Director

Date

Date

**VIRGINIA BOARD OF DENTISTRY
FORMAL HEARING MINUTES
September 10, 2021**

CALL TO ORDER: The meeting of the Virginia Board of Dentistry was called to order at 1:00 p.m., on September 10, 2021, at the Department of Health Professions, Perimeter Center, 2nd Floor Conference Center, Board Room 4, 9960 Mayland Drive, Henrico, VA 23233.

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

MEMBERS PRESENT: Sandra J. Catchings, D.D.S.
Margaret F. Lemaster, R.D.H.
J. Michael Martinez de Andino, J.D.
Dag Zapatero, D.D.S.

MEMBERS ABSENT: Jamiah Dawson, D.D.S.
Perry E. Jones, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Glory Milton, Executive Assistant
Donna M. Lee, Discipline Case Manager

COUNSEL PRESENT: James E. Rutkowski, Assistant Attorney General

OTHERS PRESENT: Erin Weaver, Assistant Attorney General
Rebecca Smith, Adjudication Specialist
Renee Larkin, Court Reporter
Rodney S. Dillman, Esquire, Respondent's Counsel

ESTABLISHMENT OF A PANEL: With five members present, a panel was established.

**Barry LeJeune, D.D.S.
Case No.: 192888** Dr. LeJeune was present with legal counsel in accordance with the Notice of the Board dated February 16, 2021.

Dr. Petticolas swore in the witnesses.

Following Ms. Weaver's opening statement, Dr. Petticolas admitted into evidence Commonwealth's Exhibits 1-5.

Following Mr. Dillman's opening statement, Dr. Petticolas admitted into evidence Respondent's Exhibits A-E.

The Commonwealth did not present any witnesses.

Dr. LeJeune testified on his own behalf. Robert D. Lenoir, D.D.S., testified on behalf of the Respondent.

Ms. Weaver and Mr. Dillman provided closing statements.

Closed Meeting:

Dr. Catchings moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(27) and § 2.2-3712(F) of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Barry LeJeune, D.D.S. Additionally, she moved that Board staff, Ms. Reen, Ms. Milton, and Board counsel, Mr. Rutkowski, attend the closed meeting because their presence in the closed meeting is deemed necessary and their presence will aid the Board in its deliberations. The motion was seconded and passed.

Reconvene:

Dr. Catchings moved to certify that the Board heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and passed.

DECISION:

Mr. Rutkowski reported that the Board dismissed the case.

Dr. Catchings moved to accept the Board's decision as read by Mr. Rutkowski. The motion was seconded and passed.

ADJOURNMENT:

With all business concluded, the Board adjourned at 2:54 p.m.

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

Sandra K. Reen, Executive Director

Date

Date

CITA Board of Directors Meeting

September 9, 2021

Gaylord Palms - Kissimmee, FL

Welcome was given by Buddy Wester, President

The treasurer discussed the budget report and new proposed budget. Overall surplus of 1.4 million due to several reasons. Less staff, more testing, moving the meeting to this fiscal year rather than last fiscal year helps explain the unexpected surplus. Yearend expense for 2021 is projected to have a small deficit of \$14,000. Assets are 3.6 million. The 2021/22 fiscal year budget summary was presented and estimated a surplus of \$396,000.

Executive Director's report discussed the difficulties and the fortuitous development of an acceptable manikin tooth due to COVID so that exams could continue.

Exam software is in development with Ciere:

- Registration and payments can be made through the software.
To ensure that the software is working properly, grading dental hygiene exams have been using software as well as paper and they match perfectly.
- Several exams can be run on one server so no new kits have been purchased.
- A final evaluation for dental software will be conducted before the end of the year.
Legacy results from old exams have been imported and added to the system.
- An examiner portal is currently in development and should be ready within a few weeks. A Zoom calibration session will be offered through the portal as well as previous information and grader evaluation.

Manual Update:

- There will be a separate manual for dental hygiene and dental candidates.
- Exam manuals have been edited to have simpler navigation and similar flow.
- Integrated additional information will include using either live patient or manikin exam.

Dental ADEX update:

- CompeDont teeth will be used for for Dental 2022.
Teeth to be used will be mandibular first and second premolars and all anterior incisors.
- Tooth lateral to the prepared teeth will have Compedont enamel.

- Candidates will have two chances to diagnose caries from a radiograph. If the candidate fails both diagnosis attempts, the candidate cannot take that portion of the exam at that time.

Dental hygiene ADEX changes were reviewed:

- Changes that were made were to align manikin and live patient exams. Verbiage was edited for clarity
- Seven-point deduction for unreported broken instrument tip.
- The 3-point award for avoiding tissue damage was deleted. Instead, the 3 points will be added in the detection exercise.

ADEX annual meeting tentatively scheduled for Aug 5-6, 2022. Place to be determined.

Committee recommendations and assignments for exams through March 2022 will be available soon.

MOU in principle with CDCA-WREB is in development. Merger will be sometime in 2022 and will go into effect 2023. Future merge will be CDCA-WREB-CITA.

Since CITA is a 501c non-profit, after the merger, a foundation will be created to possibly dispense funds for scholarship but this will be discussed further in 2022.

Jamiah Dawson, D.D.S.

Margaret Lemaster, R.D.H.

VIRGINIA BOARD OF DENTISTRY
REGULATORY-LEGISLATIVE COMMITTEE MEETING MINUTES
October 22, 2021

TIME AND PLACE: The meeting of the Regulatory-Legislative Committee was called to order at 1:00 p.m., on October 22, 2021.

PRESIDING: Patricia B. Bonwell, R.D.H., PhD, Chair

COMMITTEE MEMBERS PRESENT: Jamiah Dawson, D.D.S.
J. Michael Martinez de Andino, J.D.

COMMITTEE MEMBERS ABSENT: Alf Hendricksen, D.D.S.

OTHER PARTICIPATING BOARD MEMBERS: Nathaniel C. Bryant, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director, Board of Dentistry
Donna M. Lee, Discipline Case Manager, Board of Dentistry
Barbara Allison-Bryan, M.D., Chief Deputy Director, Department of Health Professions
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
Rebecca Schultz, Policy Specialist, Department of Health Professions

COUNSEL PRESENT: James E. Rutkowski, Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With four Board members present, a quorum was established.
Ms. Reen read the emergency evacuation procedures.

PUBLIC COMMENT: Dr. Bonwell explained the parameters for public comment and opened the public comment period. Dr. Bonwell also stated that written comments were distributed to the Board members and copies were placed on the table for the public.

Alexander T. Vaughan, D.D.S., Dental Director, Virginia Total Sleep – Dr. Vaughan stated he reviewed the summary of findings contained in the Board's agenda and noted that in 2017 the ADA adopted a statement that laid out the role that dentists can play in the screening and treatment of sleep related breathing disorders which was amended last week and has not yet been published. He said the American Academy of Dental Sleep Medicine and the ADA are in full agreement that ordering and administration of home sleep apnea testing is within the scope of the practice of dentistry, and that the diagnosis of sleep apnea is performed by physicians. Dr. Vaughan brought two FDA approved home sleep apnea tests to show the Committee and demonstrated the finger test. He suggested that an advisory panel be convened to advise the Board on developing a regulation regarding sleep apnea testing.

APPROVAL OF MINUTES: Dr. Bonwell asked if there were any edits or corrections to the May 17, 2021 minutes. Mr. Martinez moved to approve the minutes as presented. The motion was seconded and passed.

REGULATORY ACTIONS CHART: Ms. Yeatts reported that she and Ms. Reen communicated with the Governor's Office this week about the long period of time the regulations for amendment of the restriction on advertising dental specialties and the action on making a technical correction have been pending. She also stated the regulations on training in infection control were advanced to the Office of the Secretary of Health and Human Resources for review.

COMMITTEE DISCUSSION/ACTION: **Report on Sleep Studies/Diagnosis/Testing** – Ms. Yeatts and the Committee commended Ms. Schultz on the charts and information she provided for consideration regarding sleep studies.

Ms. Schultz reviewed and answered questions regarding the information she gathered from the various states pertaining to whether or not it is within the scope of practice for dentists to order home sleep apnea tests.

Ms. Yeatts stated she recently attended a meeting of the Advisory Board on Polysomnographic Technology, and it was determined that dentists can be a part of the treatment for patients with sleep apnea, and that dentists cannot diagnose sleep apnea because there are multiple physical aspects that must be considered.

Dr. Allison-Bryan explained home tests are very simple tests and very few physicians would accept the results to determine sleep apnea. She stated a physician would do different tests and reminded the Committee that a home test is not the same as a polysomnography. She supported having dentists and physicians work together to treat patients.

After discussion, the Committee agreed by consensus to recommend that the Board convene an advisory panel to develop proposed language on the role of dentists in addressing sleep apnea.

Discussion of Dental Assistants Using Scalers - Ms. Sacksteder discussed the chart addressing the policies gathered from Virginia's surrounding states which address the use of a scaler to remove cement and the level of dental assistant that could perform that task.

Ms. Reen stated that the majority of public comments received on this topic were from dental hygienists who are opposed to dental assistants using scalers. The Committee discussed that dental assistants could remove cement by using floss, wipes, and non-cutting instruments.

Dr. Bryant moved to recommend that in Guidance Document 60-7 under the subheading "Restorative Services" where it reads "remove excess cement from coronal surface of teeth" add the words "by using a non-cutting instrument". The motion was seconded and passed.

Proposed Update Guidance Document 60-7 – Delegation to Dental Assistants - Ms. Reen said this is an opportunity to identify any other proposed changes or updates in this document, noting that it was last updated in 2018. Dr. Bryant proposed the following additional changes:

- Under the subheading “Restorative Services” delete the words “rubber dams: place and remove”;
- Under the subheading “Hygiene” the sentence that reads “polish coronal portion of teeth with rotary hand piece and rubber prophylaxis cup or brush” delete the word “rotary” and replace it with “slow speed”;
- Under the heading “Duties that may be delegated to dental assistants I and II under indirect supervision of a dental hygienist” the sentence that reads “polish coronal portion of teeth with rotary hand piece and rubber prophylaxis cup or brush” delete the word “rotary” and replace it with “slow speed”; and
- Under the heading “Duties that may only be delegated to dental assistants II under direct supervision of a dentist” the sentence that reads “apply base and cavity liners/perform pulp capping procedures” add the word “indirect” after the word “perform”.

Mr. Martinez moved to recommend that Guidance Document 60-7 be adopted as amended. The motion was seconded and passed.

Proposed Guidance Document on Sedation Inspections and Permits –

Ms. Sacksteder introduced this draft guidance document, stating it was discussed and developed by an advisory committee which included dentists and inspectors who undergo or conduct sedation inspections. She then asked for discussion.

Ms. Yeatts proposed the following edits:

- Under the heading “Periodic Office Inspection for Administration of Sedation and Anesthesia”, in the second bullet, add the word “a” after the words “if there was”.
- Under the heading “Periodic Office Inspection for Administration of Sedation and Anesthesia”, in the third bullet, first sentence, after the word “their” add the word “preliminary”. In the second sentence; delete the word “shall” and insert the words “should attempt to”. Revise the fourth sentence to read “The inspector will note corrections in his final report.”
- Under the heading “OMS Requirement”, in the first bullet, delete the word “shall” and insert the word “does”. In the second bullet, first sentence, delete the word “shall” and insert the word “must”. In the second bullet, second sentence, delete the word “shall” and insert the word “must”. In the third bullet, delete the word “shall” and insert the word “must”.

Dr. Dawson moved to recommend to the Board that the amended Guidance Document on Sedation Permits be adopted. The motion was seconded and passed.

Proposed Workgroup - Dr. Bonwell asked the Committee to return to the May 17, 2021 Minutes on page 2 in the agenda book. She pointed out the discussion of forming a workgroup to discuss a regulatory proposal that would allow patients receiving active appliances, including orthodontics, be examined in person by a dentist. She stated Ms. Reen did not receive any names of prospective participants for the workgroup. After discussion, it was agreed by consensus to address this at the next Board meeting.

NEXT MEETING: No date scheduled.

ADJOURNMENT: With all business concluded, the Committee adjourned at 2:45 p.m.

Patricia B. Bonwell, R.D.H., PhD, Chair

Sandra K. Reen, Executive Director

Date

Date

**Agenda Item: Regulatory Actions - Chart of Regulatory Actions
As of November 16, 2021**

		Action / Stage Information
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Amendment to restriction on advertising dental specialties</u> [Action 4920] Proposed - At Governor's Office for 793 days
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Training and supervision of digital scan technicians</u> [Action 5600] Proposed - At Governor's Office for 37 days
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Technical correction</u> [Action 5198] Fast-Track - At Governor's Office for 730 days
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Waiver for e-prescribing</u> [Action 5382] Final - At Governor's Office for 11 days
[18 VAC 60 - 30]	Regulations Governing the Practice of Dental Assistants	<u>Removal of pulp capping as a delegable task for a DAI</u> [Action 5728] NOIRA - At Governor's Office for 159 days
[18 VAC 60 - 30]	Regulations Governing the Practice of Dental Assistants	<u>Training in infection control</u> [Action 5505] Proposed - At Governor's Office for 11 days

Revisions to Guidance Documents:

Included in your agenda package are the following:

60-27 (New guidance document) – Guidance on sedation permits

60-7 – Guidance on delegation of duties to dental assistants

Staff note:

These guidance documents were reviewed in detail by the Regulatory/Legislative Committee on October 22nd (refer to minutes in agenda package).

60-27 was recommended for Board adoption by the Committee with the changes highlighted.

60-7 was recommended for Board adoption with changes noted in RED

Board action:

To adopt 60-27, Guidance on Sedation Permits and to revise 60-7, Guidance on Delegation to a Dental Assistant as recommended by the Committee or as revised by the Board.

Virginia Board of Dentistry

Guidance on Sedation Permits

Applicants for Permit

- Applicants must complete an application for permit in either moderate or deep sedation/general anesthesia. Applicants for a permit for the administration of sedation and anesthesia must identify every location that the applicant will be administering sedation and anesthesia.
- The permit holder will notify the Board within 30 days of any changes in address of facilities or any additional facilities to be added to the permit (please note that a pre-permit inspection will occur if there are any additional facilities that were not pre-inspected).
- Once the application is deemed complete, an employee of the Department of Health Professions (inspector) will conduct an announced inspection(s) at all applicable locations.

Pre-permit Inspection

- An employee of the Department of Health Professions (inspector) will conduct an announced inspection, at all applicable locations, to review compliance with required sedation equipment 18VAC60-21-291 (B) and 18VAC60-21-301 (C); appropriate training of staff 18VAC60-21-260.H (2), 18VAC60-21-260 (I), 18VAC60-21-260 (J), 18VAC60-21-290 (D) (E), 18VAC60-25-100, and 18VAC60-21-300 (C); physical plant requirements 18VAC60-21-60.A (1); and Drug Control Act requirements § 54.1-3404.
- If an applicant is compliant with all applicable regulations, the applicant will receive a permit. However, if the applicant is found to be in non-compliance with applicable regulations, the applicant will receive a report listing the non-compliance. Depending upon the non-compliance, the applicant will be required to submit evidence of the correction or another announced inspection will be scheduled. When the applicant is in compliance, the applicant will receive a permit.

Periodic Office Inspection for Administration of Sedation and Anesthesia

- Periodic Office Inspections will be announced if there was no previous disciplinary action taken by the Board. The announcement of the inspection will occur approximately five business days or less prior to the inspection.
- Periodic Office Inspections that are unannounced will occur if there was previous disciplinary action taken by the Board.
- The permit holder will receive a copy of their preliminary onsite inspection report with listed deficiencies at the time of inspection. If the deficiency can be corrected, the permit holder may correct and provide proof of correction of those deficiencies to denbd@dhp.virginia.gov within 14 business days.

Recordkeeping

- The permit holder must comply with all applicable regulations regarding sedation recordkeeping (18VAC-21-260 (C) (D) (K), 18VAC60-21-291(D) (E) 18VAC60-21-301 (E) (G)).

- The permit holder must document within the patient record the intended level of sedation for each patient and each procedure.

OMS Requirements

- The requirement for a sedation permit does not apply to an oral and maxillofacial surgeon (OMS) who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the Board with reports that result from the periodic office examinations required by AAOMS (18VAC60-21-300 (A)).
- An OMS must hold a sedation permit if not a member of AAOMS. If the OMS holds a sedation permit and then becomes a member of AAOMS, the OMS must notify the Board within 30 days of becoming a member of AAOMS.
- An OMS, who is a member of AAOMS, must submit AAOMS office examination reports to the Board within 30 days of receipt.

DRAFT

**VIRGINIA BOARD OF DENTISTRY
 DELEGATION TO DENTAL ASSISTANTS**

DUTIES THAT MAY BE DELEGATED TO DENTAL ASSISTANTS I AND II UNDER INDIRECT SUPERVISION OF A DENTIST	
GENERAL SERVICES	
	Prepare patients for treatment/seating/positioning chair/placing napkin
	Perform health assessment
	Preventive education and oral hygiene instruction
	Perform mouth mirror inspection of the oral cavity
	Chart existing restorations and conditions as instructed by the dentist
	Take, record and monitor vital signs
	Transfer dental instruments
	Prepare procedural trays/armamentaria set-ups
	Maintain emergency kit
	Sterilization and disinfection procedures
	Compliance with OSHA Regulations and Centers for Disease Control Guidelines
	Prep lab forms for signature by the dentist
	Maintenance of dental equipment
	Select and manipulate gypsums and waxes
RADIOLOGY and IMAGING	
	Mount and label images
	Place x-ray film and expose radiographs ONLY WITH REQUIRED TRAINING
	Use intraoral camera or scanner to take images for tooth preparation and CAD CAM restorations
RESTORATIVE SERVICES	
	Provide pre- and post operative instructions
	Place and remove dental dam (already listed below)
	Maintain field of operation through use of retraction, suction, irrigation, drying
	Acid Etch - Apply/wash/dry remove only when reversible
	Amalgam: Place only
	Amalgam: Polish only with slow-speed handpiece and prophy cup
	Apply pit and fissure sealants
	Apply and cure primer and bonding agents
	Fabricate, cement, and remove temporary crowns/restorations
	Make impressions and pour and trim study/diagnostic models and opposing models
	Make impressions for athletic/night/occlusal/snore mouthguards and fluoride/bleaching trays
	Matrices - place and remove
	Measure instrument length
	Remove excess cement from coronal surfaces of teeth, using a non-cutting instrument
	Remove sutures
	Dry canals with paper points
	Mix dental materials
	Place and remove post-extraction dressings/monitor bleeding
	Rubber Dams: Place and remove
	Sterilization and disinfection procedures
	Take bite and occlusal registrations
HYGIENE	
	Apply dentin desensitizing solutions
	Apply fluoride varnish, gels, foams and agents
	Apply pit and fissure sealant (already listed above)
	Address risks of tobacco use
	Give oral hygiene instruction
	Polish coronal portion of teeth with slow-speed rotary hand piece and rubber prophy cup or brush
	Place and remove periodontal dressings
	Clean and polish removable appliances and prostheses

**VIRGINIA BOARD OF DENTISTRY
 DELEGATION TO DENTAL ASSISTANTS**

DUTIES THAT MAY BE DELEGATED TO DENTAL ASSISTANTS I AND II UNDER INDIRECT SUPERVISION OF A DENTIST CONTINUED	
ORTHODONTICS	
Place and remove elastic separators	
Check for loose bands and brackets	
Remove arch wires and ligature ties	
Place ligatures to tie in archwire	
Select and fit bands and brackets for cementation by dentist	
Instruct patients in placement and removal of retainers and appliances after dentist has fitted and made adjustments in the mouth	
Take impressions and make study models for orthodontic treatment and retainers	
BLEACHING	
Take impressions and fabricate bleaching trays	
Apply bleach/whitener	
Bleach with light but not laser	
Instruct pt on bleaching procedures	
SEDATION AND ANESTHESIA SERVICES	
Apply topical Schedule VI anesthetic	
Monitor patient under nitrous oxide	
Monitor patient under minimal sedation/analgesia	
Monitor patient under moderate/conscious sedation ONLY WITH REQUIRED TRAINING	
Monitor patient under deep sedation/general anesthesia ONLY WITH REQUIRED TRAINING	
Take blood pressure, pulse and temperature	
DUTIES THAT MAY BE DELEGATED TO DENTAL ASSISTANTS I AND II UNDER INDIRECT SUPERVISION OF A DENTAL HYGIENIST	
Prepare patients for treatment/seating/positioning chair/placing napkin	
Perform health assessment	
Preventive education and oral hygiene instruction	
Transfer dental instruments	
Prepare procedural trays/armamentaria set-ups	
Maintain emergency kit	
Sterilization and disinfection procedures	
Compliance with OSHA Regulations and Centers for Disease Control Guidelines	
Maintenance of dental equipment	
Polish coronal portion of teeth with slow-speed rotary hand piece and rubber prophylaxis cup or brush	
Place and remove periodontal dressings	
Clean and polish removable appliances and prostheses	
Mount and label images	
Place x-ray film and expose radiographs ONLY WITH REQUIRED TRAINING	
DUTIES THAT MAY ONLY BE DELEGATED TO DENTAL ASSISTANTS II UNDER DIRECT SUPERVISION OF A DENTIST	
Condense/pack and carve amalgam	
Place, cure and finish composite resin restorations only with slow-speed handpiece	
Apply base and cavity liners/perform indirect pulp capping procedures	
Final cementation of crowns and bridges after adjustment and fitting by the dentist	
Make final impressions and fabricate master casts	
Place and remove non-epinephrine retraction cord	

Virginia Board of Dentistry
Meetings Held with Electronic Participation

Purpose:

To establish a written policy for holding meetings of the Board of Dentistry with electronic participation by some of its members and the public.

Policy:

This policy for conducting a meeting with electronic participation shall be in accordance with § 2.2-3708.2 of the Code of Virginia.

Authority:

§ 2.2-3708.2. *Meetings held through electronic communication means.*

A. The following provisions apply to all public bodies:

1. Subject to the requirements of subsection C, all public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means if, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that:

a. Such member is unable to attend the meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or

b. Such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. Participation by a member pursuant to this subdivision b is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

2. If participation by a member through electronic communication means is approved pursuant to subdivision 1, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public. If participation is approved pursuant to subdivision 1 a, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to (i) a temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) a family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 1 b, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to subdivision 1 b is disapproved because such participation would violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes with specificity.

3. Any public body, or any joint meetings thereof, may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17 or the locality in which the public body is located has declared a local state of emergency pursuant to § 44-146.21, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities. The public body convening a meeting in accordance with this subdivision shall:

- a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;
- b. Make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body;
- c. Provide the public with the opportunity to comment at those meetings of the public body when public comment is customarily received; and
- d. Otherwise comply with the provisions of this chapter.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

The provisions of this subdivision 3 shall be applicable only for the duration of the emergency declared pursuant to § 44-146.17 or 44-146.21.

B. The following provisions apply to regional public bodies:

1. Subject to the requirements in subsection C, regional public bodies may also conduct any meeting wherein the public business is discussed or transacted through electronic communication means if, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting.
2. If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public.

If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes with specificity.

C. Participation by a member of a public body in a meeting through electronic communication means pursuant to subdivisions A 1 and 2 and subsection B shall be authorized only if the following conditions are met:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;
2. A quorum of the public body is physically assembled at one primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

D. The following provisions apply to state public bodies:

1. Except as provided in subsection D of § 2.2-3707.01, state public bodies may also conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided that (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) members of the public are provided a substantially equivalent electronic communication means through which to witness the meeting. For the purposes of this subsection, "witness" means observe or listen.

If a state public body holds a meeting through electronic communication means pursuant to this subsection, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

2. Notice of any regular meeting held pursuant to this subsection shall be provided at least three working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given contemporaneously with the notice provided to members of the public body conducting the meeting. For the purposes of this subsection, "continued meeting" means a meeting that is continued to address an emergency or to conclude the agenda of a meeting for which proper notice was given.

The notice shall include the date, time, place, and purpose for the meeting; shall identify the primary or central meeting location and any remote locations that are open to the public pursuant to subdivision 4; shall include notice as to the electronic communication means by which members of the public may witness the meeting; and shall include a telephone number that may be used to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

3. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body conducting the meeting.

4. Public access to the remote locations from which additional members of the public body participate through electronic communication means shall be encouraged but not required. However, if three or more members are gathered at the same remote location, then such remote location shall be open to the public.

5. If access to remote locations is afforded, (i) all persons attending the meeting at any of the remote locations shall be afforded the same opportunity to address the public body as persons attending at the primary or central location and (ii) a copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of the public body for the meeting shall be made available for inspection by members of the public attending the meeting at any of the remote locations at the time of the meeting.

6. The public body shall make available to the public at any meeting conducted in accordance with this subsection a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § 30-179.

7. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes.

8. Any authorized state public body that meets by electronic communication means pursuant to this subsection shall make a written report of the following to the Virginia Freedom of Information Advisory Council by December 15 of each year:

- a. The total number of meetings held that year in which there was participation through electronic communication means;
- b. The dates and purposes of each such meeting;
- c. A copy of the agenda for each such meeting;
- d. The primary or central meeting location of each such meeting;
- e. The types of electronic communication means by which each meeting was held;
- f. If possible, the number of members of the public who witnessed each meeting through electronic communication means;
- g. The identity of the members of the public body recorded as present at each meeting, and whether each member was present at the primary or central meeting location or participated through electronic communication means;
- h. The identity of any members of the public body who were recorded as absent at each meeting and any members who were recorded as absent at a meeting but who monitored the meeting through electronic communication means;
- i. If members of the public were granted access to a remote location from which a member participated in a meeting through electronic communication means, the number of members of the public at each such remote location;
- j. A summary of any public comment received about the process of conducting a meeting through electronic communication means; and
- k. A written summary of the public body's experience conducting meetings through electronic communication means, including its logistical and technical experience.

E. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

Procedures:

1. In order to conduct a meeting with electronic participation, a quorum of the board or a committee of the board must be physically present at a central location.
2. If a quorum is attained, one or more members of the board or committee may participate electronically if, on or before the day of a meeting, the member notifies the chair and the executive director that he/she is unable to attend the meeting due to: 1) a temporary or permanent disability or other medical condition that prevents the member's physical attendance; 2) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or 3) a personal matter, identifying with specificity the nature of the personal matter. Attendance by a member electronically for personal reasons is limited to two meetings per calendar year or no more than 25% of meetings held.

3. Participation by a member through electronic communication means must be approved by the board chair or president. If a member's participation from a remote location is disapproved because it would violate this policy, it must be recorded in the minutes with specificity
4. The board or committee holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location does not need to be open to the public.
5. The board or committee shall also include in its minutes the fact that the member participated through electronic communication means due to a temporary or permanent disability or other medical condition that prevented the member's physical attendance or if the member participated electronically due to a personal matter, the minutes shall state the specific nature of the personal matter cited by the member. If a member's participation from a remote location is disapproved because it would violate this policy, it must be recorded in the minutes with specificity.
6. If a board or committee holds a meeting through electronic communication, it must also hold at least one meeting annually where members are in attendance at the central location and no members participate electronically.
7. Notice of a meeting to be conducted electronically, along with the agenda, should be provided to the public contemporaneously with such information being sent to board members at least three working days in advance of such meeting. Notice of special, emergency, or continued meetings must be given contemporaneously with the notice provided to members.
8. Meeting notices and agendas shall be posted on the Virginia Regulatory Townhall (which sends notice to Commonwealth Calendar and the Board's website). They should also be provided electronically to interested parties on the Board's public participation guidelines list.
9. The notice shall include the date, time, place, and purpose for the meeting; shall identify the primary meeting location; shall include notice as to the electronic communication means by which members of the public may participate in the meeting; and shall include a telephone number that may be used to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.
10. The board or committee must make arrangement for the voice of the remote participant(s) to be heard by all persons at the primary or central meeting location.

11. The agenda shall include a link to a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § 30-179 to allow members of the public to assess their experience with participation in the electronic meeting.

Form:

Link to Public comment form from the Freedom of Information Council
<http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>

Adopted on (date): _____

DRAFT

Virginia Board of Dentistry

Policy on Recovery of Disciplinary Costs

On December 11, 2020, the Board voted to not assess administrative costs for the calendar year 2021.

Applicable Law and Regulations

- §54.1-2708.2 of the Code of Virginia.
The Board of Dentistry (the Board) may recover from any licensee against whom disciplinary action has been imposed reasonable administrative costs associated with investigating and monitoring such licensee and confirming compliance with any terms and conditions imposed upon the licensee as set forth in the order imposing disciplinary action. Such recovery shall not exceed a total of \$5,000. All administrative costs recovered pursuant to this section shall be paid by the licensee to the Board. Such administrative costs shall be deposited into the account of the Board and shall not constitute a fine or penalty.
- 18VAC60-15-10 of the *Regulations Governing the Disciplinary Process*. The Board may assess:
 - the hourly costs to investigate the case,
 - the costs for hiring an expert witness, and
 - the costs of monitoring a licensee's compliance with the specific terms and conditions imposed up to \$5,000, consistent with the Board's published guidance document on costs. The costs being imposed on a licensee shall be included in the order agreed to by the parties or issued by the Board.

Policy

1. Disciplinary costs will not be assessed for licensees receiving their first Board Order in which violations were found and sanctions were imposed.
2. The maximum cost assessment for a dentist is \$5,000.
3. The maximum cost assessment for a dental hygienist is \$1,250.
4. In a second and any subsequent Order against a licensee, the Board will specify the administrative costs to be recovered from a licensee in each pre-hearing consent order offered and in each order entered following an administrative proceeding. These administrative costs are in addition to the sanctions imposed which might include a monetary penalty.
5. The amount of administrative costs to be recovered will be calculated using the assessment of costs specified below and will be recorded on a Disciplinary Cost Recovery Worksheet (the worksheet). All applicable costs will be assessed as set forth in this guidance document. Board staff shall complete the worksheet and assure that the cost to be assessed is included in Board

orders. The completed worksheets shall be maintained in the case file. Assessed costs shall be paid within 45 days of the effective date of the Order, unless a payment plan has been requested and approved.

Assessment of Costs

Based on the expenditures incurred in the state's fiscal year which ended on June 30, 2018, the following costs will be used to calculate the amount of funds to be specified in a board order for recovery from a licensee being disciplined by the Board:

- \$103 per hour for an investigation multiplied by the number of hours the DHP Enforcement Division reports having expended to investigate and report case findings to the Board.
- \$182 per hour for an inspection conducted during the course of an investigation, multiplied by the number of hours the DHP Enforcement Division reports having expended to inspect the dental practice and report case findings to the Board.
- If applicable, the amount billed by an expert upon acceptance by the Board of his expert report.
- The applicable administrative costs for monitoring compliance with an order as follows:
 - \$ 130.00 Base cost to open, review and close a compliance case
 - \$ 68.00 For each continuing education course ordered
 - \$ 19.00 For each monetary penalty and cost assessment payment
 - \$ 19.00 For each practice inspection ordered
 - \$ 39.00 For each records audit ordered
 - \$ 118.00 For passing a clinical examination
 - \$ 75.00 For each practice restriction ordered
 - \$ 55.00 For each report required.

Inspection Fee

In addition to the assessment of administrative costs addressed above, a licensee shall be charged \$350 for each Board-ordered inspection of his practice as permitted by 18VAC60-21-40 of the *Regulations Governing the Practice of Dentistry*.

Effective: November 21, 2012

Last revised: December 14, 2018; Effective February 6, 2020



Virginia Department of
Health Professions
 Board of Dentistry
 Disciplinary Board Report

Today's report reviews the January –October 2021 case activity

January – October 2021

The table below includes all cases that have received Board action since January 1, 2021 through October 31, 2021

Year 2021	Cases Received	Cases Closed No/Violation	Cases Closed W/Violation	Total Cases Closed
Jan	40	20	10	30
Feb	29	28	4	32
March	31	45	4	49
April	52	24	6	30
May	30	37	3	40
June	43	32	11	43
July	27	42	1	43
August	37	42	6	48
Sept	27	48	9	57
Oct	76	21	7	28
TOTALS	392	339	61	400

Closed Case with Violations consisted of the following:

Patient Care Related:

- **45 Standard of Care: Diagnosis/Treatment:** Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also, include failure to diagnose/treat& other diagnosis/treatment issues.
- **1 Standard of Care-Surgery:** Improper/unnecessary performance of surgery, improper patient management, and other surgery-related issues
- **2 Abuse/Abandonment/Neglect:** Any sexual assault, mistreatment of a patient, inappropriate termination of provider/patient relationship, leaving a patient unattended in a health-care environment, failure to do what a reasonable person would do in a similar situation.
- **3 Unlicensed Activity:** Practicing a profession or occupation without holding a valid license as required by statute or regulation to include: practicing on a revoked, suspended, lapsed, non-existent or expired license, as well as aiding and abetting the practice of unlicensed activity.
- **2 Inability to Safely Practice:** Impairment due to the use of alcohol, illegal substances, or prescription drugs or incapacitation due to mental, physical or medical conditions.
- **1 Fraud Patient Care;** Performing unwarranted/unjust services or the falsification/alteration of patient records

Non-Patient Care Related:



Virginia Department of
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Disciplinary Board Report

- **2 Fraud Non-Patient Care Related:** improper patient billing, mishandling of pre-need funds, fee splitting, and falsification of licensing/renewal documents
- **1 HPMP:** Dismissal, vacated stay and non-compliance
- **4 Business Practice Issues:** Advertising, solicitation, records, inspections, audits, self-referral of patients, required to report not filed, prescription blanks, or disclosure.

CCA's

There were **28** CCA's issued from January 1, 2021 to October 31, 2021. The CCA's issued consisted of the following violations:

- **6 Standard of Care:** Diagnosis/Treatment_
- **22 Business Practice Issues:** Recordkeeping

Suspensions/Revocations

There have been **2** Suspensions and **1** Summary Suspension issued from January 1, 2021 to October 31, 2021.

- **2 Suspensions for Inability to Safely Practice**
- **1 Summary Suspension for Inability to Safely Practice**

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
2. To examine or cause to be examined applicants for certification, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.
5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.
6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.).
7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license, permit, or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations.
8. To appoint designees from their membership or immediate staff to coordinate with the Director and the Health Practitioners' Monitoring Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.). Each health regulatory board shall appoint one such designee.
9. To take appropriate disciplinary action for violations of applicable law and regulations, and to accept, in their discretion, the surrender of a license, certificate, registration, permit, or multistate licensure privilege in lieu of disciplinary action.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, permit or multistate licensure privilege in nursing. The special conference committee may (i) exonerate; (ii) reinstate; (iii) place the practitioner or permit holder on probation with such terms as it may deem appropriate; (iv) reprimand; (v) modify a previous order; (vi) impose a monetary penalty pursuant to § 54.1-2401, (vii) deny or grant an application for licensure, certification, registration, permit, or multistate licensure privilege; and (viii) issue a restricted license, certification, registration, permit or multistate licensure privilege subject to terms and conditions. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. The recommendation of such subordinate may be considered by a panel consisting of at least five board members, or, if a quorum of the board is less than five members, consisting of a quorum of the members, convened for the purpose of issuing a case decision. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, or matters referred for formal proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. To request and accept from a certified, registered, or licensed practitioner; a facility holding a license, certification, registration, or permit; or a person holding a multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2 and shall not be disclosed by a practitioner or facility. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A confidential consent agreement shall be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner or facility. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner or facility has (i) demonstrated gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A certified, registered, or licensed practitioner, a facility holding a license, certification, registration, or permit, or a person holding a multistate licensure privilege to practice nursing who has entered into two confidential consent agreements involving a standard of care violation, within the 10-year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the presumption that the disciplinary action be made public.

15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the examination shall constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.

1988, c. 765; 1992, cc. 659, 890; 1997, cc. 439, 564; 1998, c. 469; 2002, cc. 455, 698; 2003, cc. 753, 762; 2004, cc. 49, 64; 2009, cc. 472, 534; 2010, c. 414; 2014, c. 426; 2016, c. 82; 2017, c. 423.

§ 54.1-2400.01. Certain definition.

As used in this subtitle, "laser surgery" means treatment through revision, destruction, incision or other structural alteration of human tissue using laser technology. Under this definition, the continued use of laser technology solely for nonsurgical purposes of examination and diagnosis shall be permitted for those professions whose licenses permit such use.

(1997, c. 569.)

§ 54.1-2400.01:1. Surgery defined; who may perform surgery.

§ 54.1-2711. Practice of dentistry.

A. Any person shall be deemed to be practicing dentistry who (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any way represents him as engaged in the practice of dentistry; (ii) holds himself out, advertises, or permits to be advertised that he can or will perform dental operations of any kind; (iii) diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents, or contiguous structures; or (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes or causes to be taken digital scans or impressions for the fabrication of appliances or dental prosthesis, supplies or repairs artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes. Taking impressions for mouth guards that may be self-fabricated or obtained over-the-counter does not constitute the practice of dentistry.

B. No person shall practice dentistry unless a bona fide dentist-patient relationship is established in person or through teledentistry. A bona fide dentist-patient relationship shall exist if the dentist has (i) obtained or caused to be obtained a health and dental history of the patient; (ii) performed or caused to be performed an appropriate examination of the patient, either physically, through use of instrumentation and diagnostic equipment through which digital scans, photographs, images, and dental records are able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies; (iii) provided information to the patient about the services to be performed; and (iv) initiated additional diagnostic tests or referrals as needed. In cases in which a dentist is providing teledentistry, the examination required by clause (ii) shall not be required if the patient has been examined in person by a dentist licensed by the Board within the six months prior to the initiation of teledentistry and the patient's dental records of such examination have been reviewed by the dentist providing teledentistry.

C. No person shall deliver dental services through teledentistry unless he holds a license to practice dentistry in the Commonwealth issued by the Board and has established written or electronic protocols for the practice of teledentistry that include (i) methods to ensure that patients are fully informed about services provided through the use of teledentistry, including obtaining informed consent; (ii) safeguards to ensure compliance with all state and federal laws and regulations related to the privacy of health information; (iii) documentation of all dental services provided to a patient through teledentistry, including the full name, address, telephone number, and Virginia license number of the dentist providing such dental services; (iv) procedures for providing in-person services or for the referral of patients requiring dental services that cannot be provided by teledentistry to another dentist licensed to practice dentistry in the Commonwealth who actually practices dentistry in an area of the Commonwealth the patient can readily access; (v) provisions for the use of appropriate encryption when transmitting patient health information via teledentistry; and (vi) any other provisions required by the Board. A dentist who delivers dental services using teledentistry shall, upon request of the patient, provide health records to the patient or a dentist of record in a timely manner in accordance with § 32.1-127.1:03 and any other applicable federal or state laws or regulations. All patients receiving dental services through teledentistry shall have the right to speak or communicate with the dentist providing such services upon request.

D. Dental services delivered through use of teledentistry shall (i) be consistent with the standard of care as set forth in § 8.01-581.20, including when the standard of care requires the use of diagnostic testing or performance of a physical examination, and (ii) comply with the requirements of this chapter and the regulations of the Board.

E. In cases in which teledentistry is provided to a patient who has a dentist of record but has not had a dental wellness examination in the six months prior to the initiation of teledentistry, the dentist providing teledentistry shall recommend that the patient schedule a dental wellness examination. If a patient to whom teledentistry is provided does not have a dentist of record, the dentist shall provide or cause to be provided to the patient options for referrals for obtaining a dental wellness examination.

F. No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist.

Code 1950, § 54-146; 1972, c. 805; 1988, c. 765; 2020, cc. 37, 220.



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