

**VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY-LEGISLATIVE COMMITTEE
October 16, 2015**

TIME AND PLACE: The meeting of the Regulatory-Legislative Committee of the Board of Dentistry was called to order at 9:04 a.m., on October 16, 2015, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 3, Henrico, Virginia.

PRESIDING: Melanie C. Swain, R.D.H., Chair

MEMBERS PRESENT: John M. Alexander, D.D.S.
Tonya A. Parris-Wilkins, D.D.S.
Bruce S. Wyman, D.M.D.

OTHER BOARD MEMBERS: Charles E. Gaskins, III, D.D.S.
Al Rizkalla, D.D.S.
Evelyn M. Rolon, D.M.D.
Tammy K. Swecker, R.D.H.
James D. Watkins, D.D.S

STAFF PRESENT: Sandra K. Reen, Executive Director
Kelley W. Palmatier, Deputy Executive Director
Huong Q. Vu, Operations Manager

OTHERS PRESENT: David E. Brown, D.C., Director, Department of Health Professions
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

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

PUBLIC COMMENT: **Quinn Dufurrena, D.D.S., J.D.**, Executive Director of the Association of Dental Support Organizations (ADSO), stated that ADSO members help owner dentists with back office activities such as accounting, marketing, IT, and equipment. He added that ADSO has a Code of Ethics which prohibits interference with clinical decisions and records access and the creation of quotas. He added that ADSO would like to be involved in any discussion of regulating dental support organizations.

Dennis Gaskins, D.D.S. stated that he owns two dental practices and works under the umbrella of a dental support organization (DSO). He said he does not receive instructions regarding his practice decisions and that working with a DSO allows him to keep his fees low and to treat more people.

David Slezak, D.D.S. of Affordable Care, Inc., noted his concerns about the Texas laws addressing ownership of dental practices. He said he is ready to assist the Board in giving dentists the right to choose how to run their business.

Michelle McGregory, R.D.H., Director of the VCU Dental Hygiene Program and President of the Virginia Dental Hygienists' Association. She said VCU supports expansion of remote supervision. She noted that she provided evidence which supports increasing access to dental care at the Board's May 8th Open Forum. She stated that collaboration between dentists and dental hygienists is a win-win situation to increase access to dental care.

**APPROVAL OF
MINUTES:**

Ms. Swain asked if Committee members had reviewed the October 24, 2014 minutes. Dr. Wyman moved to accept the minutes. The motion was seconded and passed.

**DHP DIRECTOR'S
REPORT:**

Dr. Brown welcomed Dr. Parris-Wilkins to the Board. He then said he has submitted two draft legislative proposals on access to care to Secretary Hazel. He noted that one of the proposals addressed the practice of nurse practitioners and the other addressed the expansion of remote supervision settings for dental hygienists. He explained that Secretary Hazel has not decided if he will advance either of the proposals.

**STATUS REPORT ON
REGULATOR
ACTIONS:**

Ms. Yeatts reported:

- The NOIRA for a law exam is pending Governor's approval to publish and has been in this status for more than 139 days;
- The Fast-Track action to require capnography for monitoring anesthesia or sedation was rejected by the Department of Planning and Budget and was resubmitted as a NOIRA. The NOIRA has been at the Governor's Office for approval to publish for more than 34 days;
- The Fast-Track action to recognize the Commission on Dental Accreditation of Canada is pending Governor's approval to publish and been in this status for more than 24 days;
- The Periodic Review to reorganize Chapter 20 into four chapters will be published as final regulations on November 2, 2015 and go into effect on December 2, 2015. She noted that this has been under review for about four years. She recommended communication with all licensees since the regulations are quite different from the current regulations. She added that the Registrar's Office commented that the regulations were well written and credited Ms. Reen for her effort; and
- The exempt action to decrease one time renewal fees has been approved and will go into effect on December 2, 2015.

ASSIGNMENTS:

Address who may own a dental practice

Ms. Swain called for discussion. Ms. Reen explained the Board asked the Committee to address:

1. How long a non-dentist relative such as a widow can operate a dental practice; and
2. Options for holding practice management companies and other such business entities accountable for policies and practices that contribute to unsafe dental treatment.

Ms. Reen said the Committee asked staff to contact several state agencies to get information on the authority they have to hold practice management companies and other such businesses accountable for policies and practices that contribute to unsafe dental treatment:

- The State Corporation Commission (SCC) indicated that it does not handle complaints against businesses unless they fall under one of their bureaus (insurance company, financial institution, utility company, etc);
- The Department of Medical Assistance Services (DMAS) stated that it monitors Board actions to determine if it will take action against licensees. Several meetings were held with DMAS staff and contact points were established to facilitate information sharing during investigations; and
- The Office of the Attorney General said it takes complaints about fraudulent billing practices through its Consumer Protection Section (CPS) and frequently refers complaints about health care to DHP. This section does do joint investigations with other state agencies and agreed to review cases involving practice management companies where fraud is suspected for conducting joint investigations.

Ms. Reen then expressed her concern that the Board has no legal authority to regulate practice management companies and asked for guidance on addressing this topic further. Discussion followed about: claims by respondents that the management company they have affiliated with has influenced patient care decisions; adding regulations on the boundaries a dentist must adhere to when associating with management companies using the Texas Code as the model; and, the comments from the public that contracts between dentists and management companies are working within reasonable bounds. The Committee agreed by consensus to recommend that the Board continue to monitor this topic for now and asked staff to confer with Board Counsel to develop a guidance document which sets forth the current law on practice ownership and lists the decisions that only a dentist can make.

Dr. Alexander asked if action is needed on how long a widow may own a dental practice. Ms. Reen responded there is no statute which addresses this but the Board does receive inquiries where there is a belief there is a time limit for a spouse to own a dental practice. She added that current law only provides that no dentist shall be supervised by anyone who is not a dentist. The Committee agreed by consensus to recommend that the Board take no action to limit the amount of time a family member can own a dental practice.

Dr. Watkins suggested that the Board issue a guidance document on the legal provisions for ownership and where a dentist might practice and include a list of the decisions only a dentist can make. Following discussion it was agreed by consensus that staff would work with Board Counsel on development of a guidance document.

Consider establishing a policy on the role of a dentist in treating sleep apnea

Ms. Reen stated the Board requested consideration of having a policy on the appropriate role of dentists in treating sleep apnea. She added that the question is whether a dentist can diagnose the condition then reported that the position of the Board in disciplinary cases has consistently been that sleep apnea must first be diagnosed by a physician who can then coordinate with a dentist to provide treatment. During the Committee's discussion, Ms. Yeatts advised that there is a new law, 54.1-2957.15, which requires the technologists who do sleep study must be under the direction and supervision of a physician. By consensus, the Committee decided to recommend no action be taken at this time.

Work on a proposal to expand the use of remote supervision to free clinics and settings serving children and the elderly and to review the education requirements for dental assistants II

Ms. Swain said many of the speakers at the Board's forum recommended these actions to improve access to dental treatment then asked Ms. Swecker to start discussion by addressing her review of these topics, as noted in the material she submitted in the agenda. Ms. Swecker stated that the requirement to be a certified dental assistant (CDA) is a drawback for increasing the number of dental assistants II (DAII) and recommended establishing a path for dental hygienists to practice the functions delegable to DAII's without requiring them to become a CDA as a way to provide care to elderly patients in facilities such as nursing homes. Discussion followed with no action taken.

Ms. Reen asked Dr. Browder from the Virginia Department of Health (VDH) if he would address the implementation of remote supervision in the health system. He agreed and reported that: the scope of practice of dental hygienists (RDH) was not changed; RDHs are trained and calibrated; they assess patient needs and provide hygiene treatment without a dentist's examination; RDHs have access to a dentist and are required to make contact at least every two weeks; and, schedules are maintained so the supervising dentist knows where practice is occurring and what treatment is being provided. He said treatment needs are referred to community dentists. Dr. Rolon and Dr. Parris-Wilkins commented that the VDH program is working well in their communities. Dr. Brown gave out copies of the proposed draft legislation submitted to Secretary Hazel. Following discussion, a motion by Dr. Alexander to present the proposal to the Board for discussion was seconded and passed. Discussion followed regarding the possibility of expanding the type of underserved groups, but it was agreed to do so at the December board meeting when further input is received from interested groups for consideration.

Discussion moved to the education requirements for dental assistants II (DAII). Ms. Reen said that years ago dentists in rural areas told the Board they needed help in order to see more patients. In response, the Board worked with educators from accredited dental assisting programs and the VCU School of Dentistry to develop the curriculum and regulations for practice as a DA II. She added that there are two programs offering DAII training. Ms. Yeatts noted that DAs II in Virginia have broader duties than the expanded function DAs (EFDA) in other states. Following discussion of reducing the requirements or requiring passage of a clinical examination, Dr. Wyman moved to recommend that the DA II regulations not be changed at this time. The motion was seconded and passed.

Consider policy action on the subject of teledentistry

Ms. Swain opened the floor for discussion. Discussion followed on the need for a policy which requires licensure in Virginia establishes the doctor-patient relationship and addresses the security of patient information. Dr. Wyman moved to have staff revise the Board of Medicine's Guidance Document 85-12 to present to the Board for consideration at its December meeting. The motion was seconded and passed.

Consider requiring a clinical examination similar to Ohio's for dental assistants II

Ms. Swain asked if discussion was needed since the Committee voted earlier not to recommend changes in the DA II regulations. Establishing a clinical examination was discussed with no action taken. Following further discussion, Ms. Reen suggested the Committee recommend that the Board establish a Regulatory Advisory Panel (RAP) of educator to discuss the DAII requirements. By consensus, all agreed.

VDA LEGISLATIVE PROPOSAL:

Ms. Reen stated the VDA proposal to modify the provisions for mobile dental clinics is provided for information. She explained the VDA requested the legislation to require registration and is now requesting an amendment to expand the entities exempt from registration requirements. Dr. Wyman moved to recommend that the Board, at its December meeting, decide to support this proposal. The motion was seconded and passed.

NEXT MEETING:

By consensus, the Committee decided to meet on Friday, February 12, 2016 if this date works for the RAP to address DAII requirements.

ADJOURNMENT:

With all business concluded, Ms. Swain adjourned the meeting at 12:42 p.m.

Melanie C. Swain, R.D.H., Chair

Sandra K. Reen, Executive Director

Date

Date