

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. Augustus A. Petticolas, Jr., President	
	Public Comment – Dr. Petticolas	
	Approval of Minutes	
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	• Dr. Catchings	
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	• When a Dentist Dies Guide – Mr. Martinez	69-72
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	• Prescribing Antibiotics without a DEA license – Dr. Bonwell	--
	• Modernizing Disciplinary Case Records – Dr. Zapatero	--
	Board Counsel Report – Mr. Rutkowski	--

Deputy Executive Director's Report – Ms. Sacksteder

- Disciplinary Report
- CDCA/WREB Report

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Executive Director's Report – Ms. Reen

- AADA Update
- Staffing Update

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

TIME AND PLACE: The virtual formal hearing of the Virginia Board of Dentistry was called to order at 1:02 p.m., on June 10, 2021.

CALL TO ORDER: Dr. Petticolos called the meeting to order.

Consistent with Amendment 28 to HB29 (the Budget Bill for 2018-2020) and the applicable provisions of § 2.2-3708.2 in the Freedom of Information Act, the Board is convening today's meeting virtually to consider such regulatory and business matters as are presented on the agenda necessary for the board to discharge its lawful purposes, duties, and responsibilities.

Dr. Petticolos provided the Board members, staff, and the public with contact information should the electronic meeting be interrupted.

**BOARD MEMBERS
PRESENT VIRTUALLY:** Augustus A. Petticolos, Jr., D.D.S., President
Patricia B. Bonwell, R.D.H., PhD
Nathaniel C. Bryant, D.D.S.
Sandra J. Catchings, D.D.S.
Sultan E. Chaudhry, D.D.S.
Jamiah Dawson, D.D.S.
Perry E. Jones, D.D.S.
Margaret F. Lemaster, R.D.H.
J. Michael Martinez de Andino, J.D.
Dag Zapatero, D.D.S.

**STAFF PRESENT
VIRTUALLY:** Sandra K. Reen, Executive Director, Board of Dentistry
Jamie C. Sacksteder, Deputy Executive Director, Board of Dentistry
Donna M. Lee, Discipline Case Manager, Board of Dentistry

**COUNSEL PRESENT
VIRTUALLY:** James E. Rutkowski, Assistant Attorney General

**OTHERS PRESENT
VIRTUALLY:** James Schliessmann, Senior Assistant Attorney General
Lori L. Pound, Adjudication Consultant, Administrative Proceedings Div.
Rachel Steck, Court Reporter, Veteran Reporters, Inc.

**ESTABLISHMENT OF A
QUORUM:** A roll call of the Board members and staff was completed. With ten members of the Board present, a quorum was established.

**Nguyen Thao Thi
Nguyen, D.D.S.
Case No.: 203154** Dr. Nguyen did not appear. Mr. Schliessmann presented an Affidavit signed by Sandra K. Reen, Executive Director for the Board of Dentistry, which shows that on April 28, 2021, a Notice of Formal Hearing and Statement of Allegations were sent by UPS Next Day Air to Dr. Nguyen's address of record on file with the Board. The tracking information provided by UPS shows that the package was delivered at 10:18 a.m., on April 30, 2021 in Norfolk, Virginia.

Based on the representation of the Commonwealth, Dr. Petticolas ruled that adequate notice was provided to Dr. Nguyen and the Formal Hearing proceeded in her absence.

Dr. Petticolas swore in the witness.

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

Dr. Bonwell was unable to participate any further due to internet connection issues. A quorum was still established with 9 members of the Board present.

Testifying on behalf of the Commonwealth was Meghan Wingate, DHP Senior Investigator.

Mr. Schliessmann 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 Nguyen Thao Thi Nguyen, D.D.S. Additionally, she moved that Board staff, Ms. Reen, Ms. Sacksteder, Ms. Lee, 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. Following a second, a roll call vote was taken. The motion 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. Following a second, a roll call vote was taken. The motion passed.

DECISION:

Dr. Catchings moved to accept the Findings of Facts and Conclusions of Law as presented by the Commonwealth, amended by the Board, and read by Mr. Rutkowski. Following a second, a roll call vote was taken. The motion passed.

Mr. Rutkowski reported that Dr. Nguyen's right to renew her dental license to practice dentistry in the Commonwealth of Virginia is continued on indefinite suspension for a period of not less than one year from the date of entry of the Order.

Dr. Catchings moved to accept the Board's decision as read by Mr. Rutkowski. Following a second, a roll call vote was taken. The motion passed.

ADJOURNMENT:

With all business concluded, the Board adjourned at 2:09 p.m.

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

Sandra K. Reen, Executive Director

Date

Date

VIRGINIA BOARD OF DENTISTRY
PUBLIC HEARING MINUTES
June 11, 2021

TIME AND PLACE: The Virginia Board of Dentistry convened a Public Hearing at 9:09 a.m., on June 11, 2021 at the Perimeter Center, 9960 Mayland Drive, in Board Room 4, Henrico, Virginia 23233, to receive comments on proposed amendments relating to waivers for electronic prescribing.

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

MEMBERS PRESENT: Sandra J. Catchings, D.D.S., Vice President
Nathaniel C. Bryant, D.D.S., Secretary
Patricia B. Bonwell, R.D.H., PhD
Sultan E. Chaudhry, D.D.S.
Jamiah Dawson, D.D.S.
Perry E. Jones, D.D.S.
Margaret F. Lemaster, R.D.H.
J. Michael Martinez de Andino, J.D.
Dagoberto Zapatero, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director of the Board
Jamie C. Sacksteder, Deputy Executive Director
Donna Lee, Discipline Case Manager
Barbara Allison-Bryan, M.D., 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 ten members of the Board present, a quorum was established.

PUBLIC COMMENT: None.

ADJOURNMENT: The Public Hearing concluded at 9:11 a.m.

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

Sandra K. Reen, Executive Director

Date

Date

TOLL-FREE 800.262.8777

LOCAL 540.667.0600

FAX 540.667.6562

IN RE: DEPARTMENT OF HEALTH PROFESSIONS -
DENTISTRY

PUBLIC HEARING

FRIDAY, JUNE 11, 2021
9:09 A.M.

DEPARTMENT OF HEALTH PROFESSIONS
9960 MAYLAND DRIVE
SUITE 300
HENRICO, VIRGINIA 23233

County
COURT REPORTERS, Inc.
Videography
Litigation Technology™

APPEARANCES

- 1
- 2 DR. AUGUSTUS A. PETTICOLAS, JR., D.D.S.,
- 3 PRESIDENT
- 4 MS. SANDRA K. REEN, EXECUTIVE DIRECTOR
- 5 DR. PATRICIA B. BONWELL, R.D.H., PHD
- 6 DR. NATHANIEL C. BRYANT, D.D.S., BOARD MEMEBER
- 7 DR. SANDRA J. CATCHINGS, D.D.S., BOARD MEMBER
- 8 DR. SULTAN E. CHAUDHRY, D.D.S., BOARD MEMBER
- 9 DR. JAMIAH DAWSON, D.D.S., BOARD MEMBER
- 10 DR. PERRY E. JONES, D.D.S., BOARD MEMBER
- 11 DR. MARGARET F. LEMASTER, R.D.H., BOARD MEMBER
- 12 MR. J. MICHAEL MARTINEZ DE ANDINO, J.D., BOARD
- 13 MEMBER
- 14 DR. DAGOBERTO ZAPATERO, D.D.S., BOARD MEMBER
- 15 MR. JAMIE C. SACKSTEDER, DEPUTY EXECUTIVE
- 16 DIRECTOR
- 17 MR. JAMES E. RUTKOWSKI, ASSISTANT ATTORNEY
- 18 GENERAL
- 19 MS. DONNA LEE, DISCIPLINE CASE MANAGER
- 20 MS. BARBARA ALLISON BRYAN, CHIEF DEPUTY DIRECTOR
- 21 MR. DAVID E. BROWN, DHP DIRECTOR
- 22 MS. ELAINE J. YEATTS, DHP SENIOR POLICY ANALYST
- 23 MS. REBECCA SCHULTZ
- 24
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MS. REEN: Yes, sir.

MR. PETTICOLAS: ...correct?

MS. REEN: Yes, sir.

MR. PETTICOLAS: By golly, the public hearing has now adjourned.

(WHEREUPON, the Department of Health Professions Public Hearing has concluded at 9:11 a.m.)

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CAPTION

The foregoing matter was taken on the date, and at the time and place set out on the title page hereof.

It was requested that the matter be taken by the reporter and that the same be reduced to typewritten form.

1 CERTIFICATE OF REPORTER AND SECURE ENCRYPTED
2 SIGNATURE AND DELIVERY OF CERTIFIED TRANSCRIPT
3 I, **RENEE M. CORDERO-LARKIN**, Notary Public, do
4 hereby certify that the forgoing matter was reported
5 by stenographic and/or mechanical means, that same
6 was reduced to written form, that the transcript
7 prepared by me or under my direction, is a true and
8 accurate record of same to the best of my knowledge
9 and ability; that there is no relation nor employment
10 by any attorney or counsel employed by the parties
11 hereto, nor financial or otherwise interest in the
12 action filed or its outcome.

13 This transcript and certificate have been
14 digitally signed and securely delivered through our
15 encryption server.

16 IN WITNESS HEREOF, I have here unto set my hand
17 this 18TH day of JUNE, 2021.

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22 /s/ RENEE M. CORDERO-LARKIN
23 COURT REPORTER / NOTARY
24 NOTARY REGISTRATION NUMBER: 7902428
25 MY COMMISSION EXPIRES: DECEMBER 31, 2024



**VIRGINIA BOARD OF DENTISTRY
BUSINESS MEETING MINUTES
June 11, 2021**

TIME AND PLACE: The meeting of the Virginia Board of Dentistry was called to order at 9:15 a.m., on June 11, 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
Nathaniel C. Bryant, D.D.S., Secretary
Patricia B. Bonwell, R.D.H., PhD
Sultan E. Chaudhry, D.D.S.
Jamiah Dawson, D.D.S.
Perry E. Jones, D.D.S.
Margaret F. Lemaster, R.D.H.
J. Michael Martinez de Andino, J.D.
Dagoberto Zapatero, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director of the Board
Jamie C. Sacksteder, Deputy Executive Director
Donna Lee, Discipline Case Manager
David C. Brown, D.C., Agency Director, Department of Health Professions
Barbara Allison-Bryan, M.D., 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 ten members of the Board present, a quorum was established.

Ms. Sacksteder read the emergency evacuation procedures.

PUBLIC COMMENT: Dr. Petticolas explained the parameters for public comment and opened the public comment period. Dr. Petticolas also stated that written comments were received from Dr. Edward R. Kusek and Ms. Jacqueline Pace, which were included in the agenda package. He further stated that written comments received from Dr. Richard Archer, Mr. Trey Lawrence, Dr. Danielle Robb, Mr. Jack Bierig, Dr. David Russell, and Dr. Clara Spatafore were sent by email to Board members and the Public Participation list and will be posted with the draft minutes. A copy of the written comments were also distributed to the Board members at the meeting.

Tracey Martin, BSDH, RDH, Virginia Dental Hygienists' Association (VDHA) President - Ms. Martin stated that on behalf of VDHA, she was speaking in opposition to any changes to practice regulations of duties delegated to dental assistants allowing the use of scalers in the removal of

cement. Ms. Martin reviewed excerpts from the Code of Virginia and the Regulations Governing the Practice of Dental Hygiene that relate to the practice of dental assistants, scope of practice of a dental hygienist, and the delegation of duties to a dental hygienist under direction and may only be performed under indirect supervision, which includes scaling, using hand instruments, slow-speed rotary instruments, and ultrasonic devices.

David A. Russell, D.D.S., Interim Chair for the Department of General Practice and Prosthodontics at VCU School of Dentistry – Dr. Russell informed the Board that VCU School of Dentistry is having difficulties hiring Faculty of Merit. He stated there are currently several vacant positions, and in the next few years there will be a number of faculty retirements. Dr. Russell explained that in order to have Faculty of Merit, VCU needs to be competitive with other dental schools regarding salaries and the ability to offer a faculty license. A faculty license is important for foreign-trained dentists who have completed a graduate specialty program. Virginia will grant a faculty license if the specialty program is recognized by the Commission on Dental Accreditation (CODA); however, some advanced training programs are not recognized as specialties by CODA. Dr. Russell further stated that many states have accommodations to grant a teaching license for faculty based on peer reviewed credentials and the approval of the Dean of the dental school. To meet the VCU School of Dentistry's charter, Faculty of Merit are needed, which includes graduates of advanced training programs that are not CODA recognized specialties. He requested that the Board amend Title 54.1-2713, licenses to teach dentistry.

Mary Pettiette, D.D.S., Associate Dean of Admissions at VCU School of Dentistry – Dr. Pettiette addressed the Board and stated that VCU is in a crisis situation as it relates to teaching faculty. She stated that some University of North Carolina faculty would not be able to teach at VCU due to the current Virginia regulation. She reiterated that VCU is asking for help from the Board to expand Faculty of Merit.

APPROVAL OF MINUTES:

Dr. Petticolas asked if there were any edits or corrections to any of the three sets of draft minutes included in the agenda package. Dr. Petticolas stated that on page 16 of the agenda, the second paragraph of the March 19, 2021 minutes, the word "complimentary" should be changed to "complementary". Dr. Catchings moved to approve the three sets of minutes as amended. The motion was seconded and passed.

DIRECTOR'S REPORT:

Dr. Brown informed the Board that since the Governor announced that the state of emergency declared in Executive Order 51 will end June 30, 2021, the Board will not be able to do virtual meetings. He stated there were advantages to meeting virtually such as Board members not having to travel long distances and there was more public participation in meetings. The agency may pursue legislation to have some virtual meetings. Dr. Brown stated that 75% of DHP employees are currently teleworking. By September 1, 2021, staff should be prepared to come back to the new normal. He stated that there are many benefits to teleworking and staff may still be able to telework a couple of days a week.

Dr. Allison-Bryan informed the Board that it has been about a month since the Governor announced that masks could come off under certain circumstances, which was based on good science. She stated that wearing a mask became normal and it can have some psychological effects on us when we take them off. She stated the case count for COVID continues to decrease so the vaccine works. Sixty percent of the population over 18 fully vaccinated. Dr. Allison-Bryan reminded everyone that we still have to stay diligent because there will be an uptick in cases as things become more mobile.

**PRESENTATION ON
HPMP:**

Dr. Allison-Bryan introduced Amy Ressler with the Health Practitioners' Monitoring Program (HPMP), and they discussed the functions and goals of the HPMP as it relates to its participants and its interaction with the Boards. They answered questions and addressed the Board's concerns about the program. The Board requested that at the next Board meeting, further data be provided to support the 5-year contract that is implemented by HPMP, and also present information about the financial costs for participants enrolled in the HPMP.

**PRESENTATION ON 2021
DENTAL AND DENTAL
HYGIENE WORKFORCE
REPORTS:**

Dr. Yetty Shobo, Deputy Director, DHP Healthcare Workforce Data Center, provided a PowerPoint presentation to the Board that outlined the workforce trends and statistics for dentists and dental hygienists in Virginia.

**LIAISON & COMMITTEE
REPORTS:**

- **Regulatory-Legislative Committee Report** - Dr. Catchings referred the Board to the report on page 97 of the agenda. There were no questions from the Board.

- **CODA Accreditation Site Visits in Virginia** - Dr. Dawson referred the Board to the report on pages 98 and 99 of the agenda. There were no questions from the Board.

**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; and
- technical correction to fees.

The protocols for remote supervision of VDH and DBHDS dental hygienists went into effect on May 25, 2021.

The Board will adopt proposed regulations today on the following:

- training and supervision of digital scan technicians; and
- training in infection control.

The public hearing for the Waiver for e-prescribing was held this morning.

- The NOIRA for elimination of practice of pulp-capping is at the Governor's office.

- Action on Requirement for Infection Control – Ms. Yeatts reviewed the draft regulations as recommended by the Regulatory-Legislative Committee. The Board motioned to accept the adoption of the proposed regulations for infection control. The motion passed.
- Action on Digital Scan Technicians – Ms. Yeatts reviewed the draft regulations as recommended by the Regulatory-Legislative Committee.

Mr. Rutkowski informed the Board that the Attorney General's Office does not need to provide an official opinion on the regulations because at the beginning of all new regulations it is the normal process for the Attorney General's Office to review the language.

It was determined that according to the May 17, 2021 Regulatory-Legislative Committee Meeting minutes, the Committee also recommended the following changes: (1) in 18VAC60-21-10(C) – “Remote Supervision” the word “supervising” be changed to “directing”; and (2) in 18VAC60-21-165(D)(3), the words “used in reliance on” be deleted and replaced with the word “for”.

The Board motioned to accept the adoption of the proposed regulations for Digital Scan Technicians with the amended language stated in the May 17, 2021 Minutes. The motion passed.

- **Guidance Document 60-5:** Auditing Continuing Education - Ms. Yeatts reviewed the proposed changes with the Board. She stated the Regulatory-Legislative Committee under the title “Auditing CE” changed the wording from “thank you letter” to “acknowledgement letter”.
- **Guidance Document 60-10:** Failure to Comply with Advertising Guidelines – Ms. Yeatts reviewed the proposed changes with the Board.
- **Guidance Document 60-18:** Approved Template for Dental Appliance Work Order Forms – Ms. Yeatts reviewed the proposed changes with the Board.
- **Guidance Document 60-19:** Approved Template for Dental Appliance Subcontractor – Ms. Yeatts reviewed the proposed changes with the Board.
- **Guidance Document 60-22:** Failure to comply with Insurance and Billing Practices – Ms. Yeatts reviewed the proposed changes with the Board.

Dr. Catchings moved to adopt the revisions to Guidance Document 60-5; Guidance Document 60-10; Guidance Document 60-18; Guidance Document 60-19; and Guidance Document 60-22. The motion passed.

Ms. Reen stated that the Dental Clinical Exam Requirements guidance document and Dental Hygiene Clinical Exam Requirements guidance document was worked on as one document, but separated into two so that they could be posted with each application.

There was a discussion as to whether or not the Board was still accepting its March decision to only accept ADEX clinical exams for dentists and dental hygienists. Mr. Rutkowski recommended that the Board convene a closed session to further discuss this matter, and to discuss his report which was scheduled at the end of the agenda; WREB's request and §54.1-2709(B)(iv) Exam Acceptance Provision.

Closed Meeting:

Dr. Catchings moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(7) of the Code of Virginia for consultation with legal counsel pertaining to actual or probable litigation. Additionally, Dr. Catchings moved that Ms. Reen, Ms. Sacksteder, Ms. Lee, Dr. Brown, Dr. Allison-Bryan, Ms. Yeatts, Ms. Schultz, 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 Committee in its deliberations. The motion was seconded and passed.

Reconvene:

Dr. Catchings moved to certify that this 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.

The Board motioned to vote on the guidance document on Dental Clinical Exam Requirements and the guidance document on Dental Hygiene Clinical Exam Requirements that were recommendations from the Exam Committee. A roll call vote was taken. The motion passed to accept both guidance documents.

Ms. Yeatts stated the Dental Clinical Exam Requirements will be Guidance Document 60-25; and the Dental Hygiene Clinical Exam Requirements will be Guidance Document 60-26.

BOARD DISCUSSION TOPICS:

- **Consideration of Public Comments** - Ms. Yeatts stated that VCU is a state agency and they could put forth suggested legislation on their own behalf regarding faculty licensure.

After discussion, the Board motioned to support in concept, the expanded pathway that VCU has requested in an effort to obtain faculty licensure. The motion was seconded and passed.

- **Adoption of 2021 Board Meeting Calendar** – Dr. Bonwell moved to adopt the 2021 Board meeting calendar. The motion was seconded and passed.

- **Use of Scalers** – Dr. Catchings addressed the Board and requested clarification on whether a dental assistant I or II could use a scaler to remove cement from the coronal surface of teeth. After discussion, by consensus, the Board referred the matter to the Regulatory-Legislative Committee for further research.

Dr. Zapatero did not have any further comments to discuss with the Board regarding faculty licensure.

**DEPUTY EXECUTIVE
DIRECTOR'S REPORT:**

Ms. Sacksteder reviewed the disciplinary Board report on case activity from January 1, 2021 to May 31, 2021, giving an overview of the actions taken and a breakdown of the cases closed with violations.

Ms. Sacksteder also reviewed the Board's findings regarding a request by the Regulatory-Legislative Committee for Board staff to develop a methodology to gather statistics and aggregate data on past disciplinary cases addressing pediatric morbidity/mortality in dental offices so the findings could be used to track specific information on sedation records to assist the Board in making policy decisions.

**EXECUTIVE DIRECTOR'S
REPORT:**

Ms. Reen commended Ms. Lee and Ms. Sacksteder for their assistance during the current staff shortage. She stated that interviews are scheduled for the Executive Assistant vacancy. She also informed the Board that the Governor signed an Executive Order aimed at reducing Virginia's reliance on single-use plastics, which will affect the use of plastic water bottles at meetings.

- **When a Dentist Dies Guide** – Ms. Reen stated the guide will be presented for the Board to review at its September Board Meeting.

- **Grants to develop Interstate Compacts for Licensure Portability** - Ms. Reen informed the Board that the Department of Defense received approval for grants to develop interstate compacts for licensure portability and that she has been selected to be one representative to participate on licensure compact in Dentistry. She explained that licensure compact will allow a dentist to work in another state if licensed in one state accepted by compact.

- **Sanctioning Respondents** – Ms. Reen emphasized the need of consistency in sanctioning with Board orders and having like issues resulting in like sanctions. When making a determination about sanctions, she encouraged Board members to ask her, Mr. Rutkowski, and Ms. Sacksteder what has been done in the past in similar circumstances.

Dr. Petticolas acknowledge all the hard work that Ms. Reen has provided to the Board.

Mr. Rutkowski asked the Board how they wanted to respond to WREB's request to meet with representatives of the Board. After discussion, the Board declined the request to meet with WREB.

Ms. Reen informed the Board that DHP is planning an orientation for new Board members.

Virginia Board of Dentistry
Board Business Meeting
June 11, 2021

ADJOURNMENT: With all business concluded, the Board adjourned at 2:30 p.m.

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

Sandra K. Reen, Executive Director

Date

Date

PUBLIC COMMENTS RECEIVED FOR JUNE 11, 2021 BOARD MEETING



VCU

**Virginia Commonwealth University
School of Dentistry
Office of the Dean**

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520 N. 12th Street
Box 980566
Richmond, Virginia 23298-0566

804 828-9184 • Fax: 804 828-6072
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dentistry.vcu.edu

June 8, 2021

Virginia Board of Dentistry

Dear Members of the Board:

I am writing this letter to voice my strong support for the proposal for a new instructor's license in Virginia. This new license would allow the VCU School of Dentistry to recruit new faculty who would be valuable colleagues in our teaching mission. Following the model of states such as North Carolina, Florida, Texas, and Ohio, the new licensure pathway would provide a safe and established way for VCU to recruit and retain excellent faculty members.

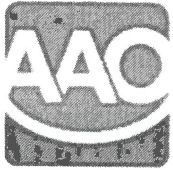
All potential faculty using this pathway would be vetted and approved by the Dean of the School of Dentistry. They would have to follow a rigorous credentialing and peer review program, which would assure that the individuals maintain an acceptable standard. In addition, these instructors would not be able to use their time with an instructor's license to count toward obtaining a regular dental license through Virginia's license by credentials process.

I wholeheartedly believe that in the near future a motion needs to be made and passed by the Board of Dentistry to establish this instructor's license. It will have lasting benefits for the future of dental education in the commonwealth.

Respectfully,

A handwritten signature in cursive script, appearing to read "Richard D. Archer".

Richard D. Archer DDS, MS
Senior Associate Dean of Clinical Education



June 4, 2021

J. Kendall Dillehay, DDS, MS
President



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Ms. Sandra Reen
Executive Director
Virginia Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA
23233-1560

Mr. Augustus A. Petticolas, Jr., D.D.S.
President
Virginia Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA
23233-1560

Ms. Sandra Catchings, D.D.S
Chair, Regulatory-Legislative Committee
Virginia Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA
23233-1560

VIA E-MAIL

Dear Ms. Reen, Dr. Petticolas, Dr. Catchings, and Members of the Virginia Board of Dentistry:

We write to you on behalf of the Virginia Association of Orthodontists (“VAO”) and the American Association of Orthodontists (“AAO”) and its approximately 400 members in Virginia, who are all licensed orthodontists.

We understand that the Virginia Board of Dentistry (“the Board”) is currently working on draft regulations to establish the training requirements for a digital scan technician. Based on conversations during the Regulatory-Legislative Committee meetings on April 23, 2021, and May 17th, 2021, it appears that the Committee, which consists of members of the Board, has serious concerns about the teledentistry legislation passed during the 2020 Session of the General Assembly of Virginia. As recorded in the minutes of the Committee meeting on May 17, 2021, after discussion and by consensus,

“the Committee requested that a workgroup be formed to draft a legislative proposal to require patients who receive an appliance, including an orthodontic appliance, through teledentistry be examined in person by a dentist following the delivery of the appliance.” (see Page 2 of the May 17, 2021 minutes). The VAO and AAO support the Committee’s forming a workgroup to develop a proposal for legislation to address this very important issue and to address an area where the 2020 teledentistry legislation fell short of its goal to protect patients using teledentistry.

At the same May 17th meeting, Dr. Catchings also expressed the need for the workgroup in order to gather more information. At the time of its writing, the AAO opposed the 2020 teledentistry legislation, unless amended. The AAO submitted proposed amendments, and reasoning for those amendments, during committee hearings and to Governor Northam prior to his signing the bill into law. Seeing as several members of the Committee have shared similar concerns about the now law, we are providing to the Board and the Committee the AAO’s concerns with the law.

The AAO supports laws that it believes will best protect patient health and safety, and we applaud the spirit of the language in Chapter 27 to establish teledentistry and the legislature’s interest in passing legislation that will allow for teledentistry to be used in a safe way. Chapter 27 now includes several provisions that the AAO believes are in the best interest of the health and safety of Virginia patients. Such provisions include requiring dentists using teledentistry to document, “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.” However, the AAO believes that Chapter 27 has several areas that could have unintended consequences and seemingly do not best protect patient health and safety. The AAO has concerns with the following provisions for which we suggest potential amendment language for the Committee to consider in its proposal for legislation (either stricken through or in red):

- [Section 54.1-2700. Definitions]: “Teledentistry” means the ~~delivery~~ practice of dentistry between a patient and a dentist who holds a license to practice dentistry by the Board, through the use of telehealth systems and electronic technology or media, ~~including which~~ must use interactive, two-way audio or video technology in addition to the secure asynchronous transmission of electronic health records, digital files, photographs or health data to a dentist or his designee. Teledentistry does not include audio-only telephone, electronic mail messaging, facsimile transmission, or online questionnaire.

As written, teledentistry is defined as the “delivery of dentistry.” The Committee should consider amending this phrase so that teledentistry is defined as the practice of dentistry. This language is consistent with other rules and regulations in the Dental Practice Act, and it better ensures that dentists are held to the same standard of care, regardless of the modality by which they practice dentistry. Additionally, the current definition of teledentistry allows for electronic technology (asynchronous) or synchronous audio or video. This means that a dentist or orthodontist would be allowed to provide comprehensive orthodontic treatment via teledentistry using only asynchronous

technology, which the AAO believes does not provide a sufficient level of supervision by the dentist in order to provide treatment that complies with the standard of care for orthodontic treatment.

- [Section 54.1-2711.D.]: Dental services delivered through the use of teledentistry shall (i) be consistent with the standard of care as set forth in section 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. No dentist shall provide or order an appliance for a patient through teledentistry without first reviewing bone images or X-rays of the patient and documenting such review in the patient's medical record.

The section noted in this provision- section 8.01-581.20-does not delineate or define that the standard of care would require an in-person encounter with a dentist, even in cases of prescribing appliances long-term orthodontic treatment. Therefore, the AAO proposes that no dentist should provide or order an appliance, as defined in this section, through teledentistry without review bone images or x-rays of the patient. This requirement would allow the treating dentist to understand what is going on beneath the gumline (impacted teeth, bone loss, etc.), seek to avoid complications, and determine if patients are suitable candidates for the appliance and specifically for orthodontia. The AAO believes that significant harm can occur to the patient if orthodontic treatment is provided without first evaluating what is going on beneath the gumline.

- [Section 54.1-2711. E.]: In cases in which teledentistry is provided to a patient who has a dentist of record and has not had a dental wellness examination in the previous six months prior to the initiation of teledentistry, the dentist providing teledentistry ~~shall~~ must recommend that the patient schedule a wellness examination. If a patient to whom teledentistry is provided does not have a dentist of record, the dentist ~~shall~~ must provide or cause to be provided to the patient options for referrals for obtaining a dental wellness examination. Teledentistry services cannot be provided until such record of the examination can be provided.

As members of the Committee also noted, *recommending* that a patient see a dentist for a wellness exam and *referring* a patient to a dentist for a wellness examination is not the same as *requiring* that the patient has one before using teledentistry, especially in cases of orthodontia. This provision, as written, does not require dentists to confirm that a patient has had a wellness examination within the last sixth months. The AAO suggests adding to this provision language that would require the dentist to confirm and review records, rather than suggesting the patient do so, in order to maintain standards of care.

- [Section 54.1-2719 A]: Licensed dentists may employ or engage the services of any person, firm, or corporation to construct or repair an appliance, extraorally, in accordance with a written or digital work order. Any appliance constructed or repaired by a person, firm, or

corporation pursuant to this section shall be evaluated and ~~reviewed~~ inspected in person by the licensed dentist who submitted the written or digital work order, or a licensed dentist in the same dental practice. A person, firm, or corporation so employed or engaged shall not be considered to be practicing dentistry. No such person, firm, or corporation shall perform any direct dental service for a patient, but they may assist a dentist in the selection of shades for the matching of prosthetic devices when the dentist sends the patient to them with a written or digital work order.

The AAO suggests amending this section so that the treating dentist, or a licensed dentist in the same dental practice, who orders any appliance reviews that appliance in person to confirm its accuracy and fit. In the case of another dental appliance, dentures, laws regularly require that a lab creating the appliance send the appliance back to the prescribing dentist prior to receipt by the patient, so the dentist can inspect and confirm that the appliance conforms with the prescription and impressions that were provided. The same reasoning should apply to orthodontic appliances; the dentist should be required to inspect the appliances for conformity to the prescription and impressions (digital or physical) before being sent to the patient to begin treatment. The AAO believes that this suggested amendment specifically would address the concerns discussed by the Committee.

While the AAO commends the legislature for recognizing the need for rules to define teledentistry and how it should be used, the AAO supports the Committee's decision to form a workgroup to develop a legislative proposal, and we are happy to assist in any way we can. The AAO believes that the suggested amendments ensure that telehealth advancements continue to grow in a thoughtful way, while keeping patient health and safety a priority in Virginia. If you have any questions, please contact the AAO's Government Affairs Associate, Gianna Nawrocki, at ghnawrocki@aaorho.org or at 314-292-6527.

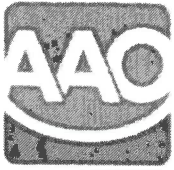
Sincerely,



Trey Lawrence
Vice President, General Counsel
American Association of Orthodontists



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June 7, 2021

Ms. Sandra Reen
Executive Director
Virginia Board of Dentistry
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Mr. Arthur Petticolas, D.D.S.
President
Virginia Board of Dentistry
9960 Mayland Drive, Suite 300
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Ms. Sandra Catchings, D.D.S.
Chair
Virginia Board of Dentistry
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VIA E-MAIL

Dear Ms. Reen, Dr. Petticolas, Dr. Catchings, and Members of the Virginia Board of Dentistry:

We write to you on behalf of the Virginia Association of Orthodontists (“VAO”) and the American Association of Orthodontists (“AAO”) and its approximately 400 members in Virginia, who are all licensed orthodontists.

The VAO and AAO understand that the Virginia Board of Dentistry (“the Board”) is currently working on draft regulations to establish the training requirements for a digital scan technician. In the interests of patients and dental professionals throughout Virginia, the VAO and AAO strongly urge the Board to consider asking the Attorney General of Virginia an official advisory opinion of the law. Such a request is authorized by statute and may be made by, “the head of a state division,

bureau, institution or board” when “the question dealt with is directly related to the discharge of the duties of the official requesting the opinion.”¹ The Board presently has a duty to promulgate regulations consistent with Virginia law and the intent of Chapters 37 and 220 of the 2020 Acts of the Assembly, and it appears an advisory opinion may be necessary in order for it to do so.

Based on conversations during the Regulatory-Legislative Committee meetings on April 23, 2021, and May 17th, 2021, it appears that the Committee, which consists of members of the Board, has serious concerns about the teledentistry legislation passed during the 2020 Session of the General Assembly of Virginia. As an example of the confusion hindering the Board’s ability to fulfill said duty, at the Regulatory Legislative Committee Meeting on May 17th, 2021, a Senior Policy Analyst for the Department of a Health Professions, Ms. Elaine Yeatts, indicated that a digital scan technician, “does not have to be directly supervised or indirectly supervised by a dentist,”² and that it is likely that a digital scan technician, “is not an employee of the dentist.”³ This interpretation, however, appears incongruent with Chapters 37 and 220 and the purpose of the Intended Regulatory Action, which is described in the Register as follows:

The purpose of the proposed action is, “to implement Chapters 37 and 220 of the 2020 Acts of Assembly, which define a digital scan technician, as used in teledentistry, and require the board to promulgate regulations for the education and training of technicians to practice under the *supervision* of a dentist licensed in Virginia. Proposed amendments include (i) establishing requirements for a board approved training program, (ii) specifying the responsibility of the dentist for the practice of teledentistry and training and *supervision* of a digital scan technician, (iii) voluntary registration of digital scan technicians, and (iv) other changes necessary to implement the provisions of Chapters 37 and 220.” (Emphasis added).

Furthermore, the language of the statute authorizing the “digital scan technician” seems clear:

No person other than a dentist, dental hygienist, dental assistant I, dental assistant II, digital scan technician, or other person under the *direction* of a dentist shall obtain dental scans for use in the practice of dentistry.⁴ (Emphasis added).

Therefore, it appears that there is discrepancy between the proposed regulatory action, which is to determine dentists’ responsibility for *supervision* of digital scan technicians, and what Department of Health Professions’ staff has interpreted as *direction* rather than *supervision*.

Members of the Committee also expressed concerns with Ms. Yeatts’ interpretation that a patient could be treated entirely via teledentistry, with the treating dentist never seeing the patient in-person. The specific example discussed was in the case of fitting an orthodontic appliance and

¹ VA ST § 2.2-505. Official opinions of Attorney General

² Virginia Board of Dentistry Regulatory-Legislative Committee Meeting. Virginia Board of Dentistry, May 17, 2021. Audio File, 23:30.

³ Virginia Board of Dentistry Regulatory-Legislative Committee Meeting. Virginia Board of Dentistry, May 17, 2021. Audio File, 24:12.

⁴ VA ST § 54.1-2708.5. Digital scans for use in the practice of dentistry; practice of digital scan technicians.

the need for the treating dentist to verify it fits properly. At this time⁵, Ms. Michelle Schultz, Policy Analyst at the Department of Health Professions, offered her opinion as it relates to the ability to require that final fitting and inspection be done by the dentist, stating that she did not see such requirement, “would take it out of the scope of teledentistry by requiring the fitting of an appliance to come later,” adding that, “it could still be considered that you relied on dentistry to get the digital scans.”⁶ Ms. Schultz did add that while Ms. Yeatts does not agree with this, this was her reading of the language.⁷

The AAO and VAO appreciate the Committee’s continued efforts to ensure regulations passed are in the best interest of patient health and safety. The members of the Committee, as well as the representatives from the Department of Health Professions, have highlighted the importance of these regulations and the need for clarity. The VAO and AAO respectfully request that in order to obtain such clarity, the Board, or a representative from the Board, request an official opinion of the law from Attorney General Mark Herring.

Should you have any questions or concerns, please do not hesitate to reach out to the AAO’s General Counsel, Trey Lawrence, at 314-292-6525 or tlawrence@aaortho.org. We welcome the opportunity to continue to engage with you on this important topic.

Sincerely,



Trey Lawrence
Vice President, General Counsel
American Association of Orthodontists



Danielle Robb, DDS, MS
President
Virginia Association of Orthodontists

⁵ Virginia Board of Dentistry Regulatory-Legislative Committee Meeting. Virginia Board of Dentistry, May 17, 2021. Audio File, 39:36

⁶ Virginia Board of Dentistry Regulatory-Legislative Committee Meeting. Virginia Board of Dentistry, May 17, 2021. Audio File, 39:50

⁷ Virginia Board of Dentistry Regulatory-Legislative Committee Meeting. Virginia Board of Dentistry, May 17, 2021. Audio File, 40:26

TO: Virginia Board of Dentistry
FROM: Jack R. Bierig, Legal Counsel to WREB
RE: Public Comment on March 19, 2021 Board Decisions To Cease Recognizing WREB Exams
DATE: June 9, 2021

Thank you for the opportunity to provide public comment to the Virginia Board of Dentistry. In this comment, I will address the two principal reasons that the Board determined, effective January 1, 2023, to cease recognizing the exams for dental and dental hygiene licensure offered by the Western Regional Examining Board (“WREB”). As I understand it, those reasons were (a) a concern that without being a member of WREB, the Board will have no input into changes in WREB exams and will not even know of those changes until after they are implemented; and (b) a concern about the scoring methodology for the WREB dental licensure exam. In this comment, I will suggest how both of these concerns can effectively be met.

With respect to the first concern, WREB has extended an offer to have the Board become a member, and I am hereby reiterating that offer. WREB would welcome the involvement and input of the Board in the development and modification of its exams and its decision-making process generally. In making this offer, WREB understands that legal counsel to the Board has apparently taken the position that the Board cannot be a member of more than one testing agency without risking improper conflicts of interest – and that, since the Board is already a member of another entity that administers licensure exams in dentistry, it cannot be a member of WREB.

However, I am not aware of any legal authority supporting this position as a matter of Virginia law or the law of any other state. Likewise, neither WREB nor I have seen any authority for this point cited by the Board or its counsel. And I do not understand why it would be a

conflict for the Board to be a member of more than one testing agency – given that the Board does not stand to gain financially from membership in any such agency.

In this connection, I would point out that a substantial majority of State Boards of Dentistry are members of more than one testing agency, including more than half a dozen State Boards that are members of both WREB and either the Commission on Dental Competency Assessments (“CDCA”), the Council of Interstate Testing Agencies (“CITA”), or both. Attached as Exhibit 1 is a chart that WREB previously submitted to James Rutkowski, counsel to the Board. That chart shows that a substantial majority of state dental boards are members of multiple testing agencies.

WREB would be pleased to put the Board in touch with other state dental boards that have concluded that there is no legal or ethical impediment to being a member of more than one testing agency. These other boards can provide the Board with their analysis of the issue and their experience in being a member of more than one testing agency. But for now, WREB hopes that the Board will seriously consider its invitation to have the Board become a member of WREB – and to work with WREB to design and implement licensure exams that serve the best interests of dental practitioners and patients in the Commonwealth.

Turning to the Board’s second concern, WREB continues to believe that the March 19 decision to cease recognizing its dental exam was based on a misunderstanding of that exam and its scoring methodology. That misunderstanding cannot fairly be addressed in a 3 to 5 minute public comment period. Rather, I would respectfully submit that a meeting between appropriate representatives of the Board and appropriate representatives of WREB would provide the Board with an accurate understanding of the relevant issues and an opportunity to discuss how the concerns of the Board can be addressed to the satisfaction of the Board. Accordingly, on behalf

of WREB, I am hereby requesting such a meeting. WREB would be pleased to participate in such a meeting at a time and place that is convenient for the Board.

Thank you again for the opportunity to provide this public comment. WREB hopes that, after considering this comment, the Board will accept its invitation to become a member and to meet with WREB to discuss the Board's concerns about the WREB examinations.

Exhibit 1

Member States of Testing Agencies

	COCA	CMA	CROTS	ERTA	WRFB
Alabama		x	x	x	
Alaska					x
Arizona	x				x
Arkansas	x	x	x	x	x
California			x		x*
Colorado					x
Commonwealth of Jamaica	x				
Connecticut	x				
Delaware					
District of Columbia	x				
Florida	x				
Georgia			x		
Hawaii	x		x		x**
Idaho					x
Illinois	x		x		x
Indiana	x				x
Iowa			x		x
Kansas	x		x		x
Kentucky	x				
Louisiana		x			
Maine	x				
Maryland	x				
Massachusetts	x				
Michigan	x				
Minnesota	x		x		x
Mississippi	x				
Missouri	x		x		x
Montana					x
Nebraska			x		
Nevada	x				x
New Hampshire	x				
New Jersey	x				
New Mexico	x		x		x
New York	x				
North Carolina		x			
North Dakota			x		x
Ohio	x				
Oklahoma	x		x		x
Oregon	x				x
Pennsylvania	x				
Puerto Rico		x			
Rhode Island	x				
South Carolina		x	x	x	
South Dakota			x		
Tennessee		x		x	
Texas			x		x
US Virgin Islands		x			
Utah	x	x			x
Vermont	x				
Virginia		x			
Washington	x		x		x
West Virginia	x	x	x	x	
Wisconsin	x		x		
Wyoming	x		x		x
* Dental Only					
** Dental Hygiene Only					

**Support Document for the Suggested Change to:
54.1-2713. Licenses to Teach Dentistry**



June 9, 2021

Subject: REQUEST TO AMEND TITLE 54.1-2713, LICENSES TO TEACH DENTISTRY.

Dear members of the Virginia Board of Dentistry,

The School of Dentistry is having difficulties hiring Faculty of Merit. Currently we have 3 open vacancies in the Prosthodontic section and 4 open vacancies in the General Practice section. In addition to our vacant positions, in the next few years we stand to lose a significant number of faculty to retirement. Of our current full time prosthodontists, 3 out of 6 are over 60. Of our current full-time general practitioners, 8 out of 20 are over 60. Data from the American Dental Education Association reports that nationwide 40% of dental school faculty are over the age of 60. We have quite a few faculty who are retired military. Currently the military is reducing their number of dentists, which decreases our potential pool of applicants.

To be competitive, we need faculty of merit. To have faculty of merit, we need to be competitive with other dental schools. A big part of competitiveness is salaries, which Dean Spatafore is addressing. The next key to competitiveness is the ability to offer a faculty license. A faculty license is important for foreign-trained dentists who have completed a graduate specialty program. Virginia grants such a license if the specialty program is recognized by the Commission on Dental Accreditation. Some advanced training programs fall under the category of general dentistry and consequently are not recognized as specialties by the Commission on Dental Accreditation. These advanced training programs are 2 to 3 years in length and contain a clinical component. Examples of advanced training programs that are not ADA recognized specialties are: Operative Dentistry, Material Science, Digital Dentistry, Esthetic Dentistry, Dental Sleep Medicine and Implantology. Faculty licenses in Virginia are not granted if the Council of Dental Accreditation does not recognize the advanced training program specialty.

Many states have accommodations to grant a teaching license for faculty based on peer reviewed credentials and the approval of the Dean of the dental school. Examples include North Carolina, Florida, Massachusetts, Texas, Ohio, Colorado, Oregon and New York.

Prominent faculty of Merit include:

Dr. Andre Ritter, Professor and Chair of Cariology and Comprehensive care at New York University. Dr. Ritter is the author of Sturdevant's Art and Science of Operative Dentistry.

Dr. Marcos Vargas, Professor, Department of Family Dentistry, Univ of Iowa

Dr. Markus Blatz, Professor and Chair, Department of Restorative Dentistry, University of Pennsylvania

Dr. Patricia Pereira, Associate Dean of Academic Affairs, University of Florida

Dr. Taiseer Sulaiman, Director of Biomaterials, University of North Carolina and an International Speaker

CODA Standard 3-1 requires that all faculty must be credentialed by demonstrating appropriate knowledge and experience for the specific discipline. Granting of a faculty license would occur only with the approval of the School of Dentistry's Credentialing Committee. At the school of dentistry, we also have a built in peer review system. Patients whose treatment is overseen by a particular faculty member, are routinely evaluated by other faculty members at subsequent appointments. Patients that are treated in the Faculty Practice Clinic are routinely evaluated by other faculty members. A faculty license shall expire upon the holder's end of employment with the School of Dentistry. A faculty license does not satisfy the requirements for a Virginia Dental License by credentials.

The School of Dentistry is the only dental school in the Commonwealth. Our charter is to provide the citizens of Virginia with highly qualified dentists. To meet our charter we need faculty of merit, which includes graduates of advanced training programs that are not Commission on Dental Accreditation recognized specialties. I appreciate your time today and I appreciate your consideration of the request from the School of Dentistry to amend section Title 54.1-2713, Licenses to teach dentistry.



David A. Russell, D.D.S.
Associate Professor
Interim Chair
Department of General Practice and Prosthodontics
School of Dentistry
Virginia Commonwealth University
(804) 828-6492
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June 9, 2021

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Fax: 804.828.6072
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Dear Members of the VA Dental Board:

This letter is in support of the proposal to modify the Faculty License Requirements in the Commonwealth of Virginia. This modification would allow Virginia Commonwealth University School of Dentistry to recruit new, foreign trained, highly competent faculty, who would be valuable colleagues to our teaching mission. This modification is vital for foreign-trained dentists who have the credentials to be productive members of our faculty.

All potential faculty utilizing this pathway for licensure would be fully vetted by the School of Dentistry including the Dean and a peer review committee. This committee would be the same one that we will be using for the new CODA Standard 3-1. This standard requires that all faculty must be credentialed by demonstrating appropriate knowledge and experience for their specific discipline. Candidates would follow a rigorous credentialing and peer review program, this would assure the individuals have the best credentials, maintain high standards throughout their careers and would help address the severe faculty shortage we are facing. This license would NOT allow these individuals to count this time toward obtaining a regular dental license though Virginia's license by credentials process. Nor would it allow the person holding the license to practice dentistry outside of the VCU School of Dentistry.

When reviewing other state's Board of Dentistry requirements for licensure many states have this type of license in place. That gives the dental schools in those states the edge for hiring these highly qualified individuals. They serve in all capacities at these dental schools including Associate Deans, Department Chairs, Research Fellows and general faculty. We cannot compete in the hiring process, thus we are losing out in the race to become the BEST all around Dental School in the country and attracting top notch faculty.

As the only dental school in the Commonwealth, it is our mission to provide the citizens of Virginia with highly trained dentists, and to do so we need to include foreign-trained dentists many of whom are advanced trained graduates of programs that may not be recognized by the Commission on Dental Accreditation. As dean, I am in complete support of this change, and I appreciate the consideration of the Board.

Kind Regards,

A handwritten signature in cursive script that reads "Clara M. Spatafore".

Clara M. Spatafore, DDS, MS
Interim Dean, School of Dentistry



VCU

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dentistry@vcu.edu

June 8, 2021

Virginia Board of Dentistry

Dear Members of the Board:

I am writing this letter to voice my strong support for the proposal for a new instructor's license in Virginia. This new license would allow the VCU School of Dentistry to recruit new faculty who would be valuable colleagues in our teaching mission. Following the model of states such as North Carolina, Florida, Texas, and Ohio, the new licensure pathway would provide a safe and established way for VCU to recruit and retain excellent faculty members.

All potential faculty using this pathway would be vetted and approved by the Dean of the School of Dentistry. They would have to follow a rigorous credentialing and peer review program, which would assure that the individuals maintain an acceptable standard. In addition, these instructors would not be able to use their time with an instructor's license to count toward obtaining a regular dental license through Virginia's license by credentials process.

I wholeheartedly believe that in the near future a motion needs to be made and passed by the Board of Dentistry to establish this instructor's license. It will have lasting benefits for the future of dental education in the commonwealth.

Respectfully,

Richard D. Archer DDS, MS
Senior Associate Dean of Clinical Education

an equal opportunity/affirmative action employer

Code of Virginia

Title 54.1. Professions and Occupations

Subtitle III. Professions and Occupations Regulated by Boards within the Department of Health

Professions

Chapter 27. Dentistry

Article 2. Licensure of Dentists

§ 54.1-2713. Licenses to teach dentistry; renewals (suggested change written in red font)

A. Upon payment of the prescribed fee and provided that no grounds exist to deny licensure pursuant to § 54.1-2706, the Board may grant, without examination, a faculty license to teach dentistry in a dental program accredited by the Commission on Dental Accreditation of the American Dental Association to any applicant who meets one of the following qualifications:

1. Is a graduate of a dental school or college or the dental department of an institution of higher education, has a current unrestricted license to practice dentistry in at least one other United States jurisdiction, and has never been licensed to practice dentistry in the Commonwealth; or
2. Is a graduate of a dental school or college or the dental department of an institution of higher education, has completed an advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association, or has never been licensed to practice dentistry in the Commonwealth; Or:
3. Certification letter from the dean that the applicant has met or been approved under credentialing standards of a dental school or an academic medical center with which the person is to be affiliated; and such dental school or academic medical center shall be accredited by the American Dental Association's Commission on Accreditation or the Joint Commission on Accreditation of Healthcare Organizations.

B. The dean or program director of the accredited dental program shall provide to the Board verification that the applicant is being hired by the program and shall include an assessment of the applicant's clinical competency and clinical experience that qualifies the applicant for a faculty license.

C. The holder of a license issued pursuant to this section shall be entitled to perform all activities

that a person licensed to practice dentistry would be entitled to perform and that are part of his faculty duties, including all patient care activities associated with teaching, research, and the delivery of patient care, which take place only within educational facilities owned or operated by or affiliated with the dental school or program. A licensee who is qualified based on educational requirements for a specialty board certification shall only practice in the specialty for which he is qualified. A license issued pursuant to this section shall not authorize the holder to practice dentistry in non affiliated clinics or in private practice settings.

D. Any license issued under this section shall expire on June 30 of the second year after its issuance or shall terminate when the licensee leaves employment at the accredited dental program. Such license may be renewed annually thereafter as long as the accredited program certifies to the licensee's continuing employment.

1975, c. 479, § 54-175.1; 1976, c. 327; 1988, c. 765; 2005, cc. 505, 587; 2012, cc. 20, 116.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Why is the suggested change needed?

1. Faculty Shortage in Dental Education

The August 2017 Journal of Dental Education report, "Dental Schools Vacant Budgeted Faculty Positions," revealed several reasons that faculty vacancies persist, including competitiveness of salaries, candidates not meeting position requirements, new positions open due to new schools or expansions of class size, and faculty separations (retired, left for private practice, left for position at another school) (Figure 1). The report's authors state, "Overall, among full-time faculty members, retirement was a far larger problem for vacancies than competition with the private sector in 2015-16. These retirement rates suggest a need for an infusion of younger faculty members to replenish schools after the retirement of aging faculty members."

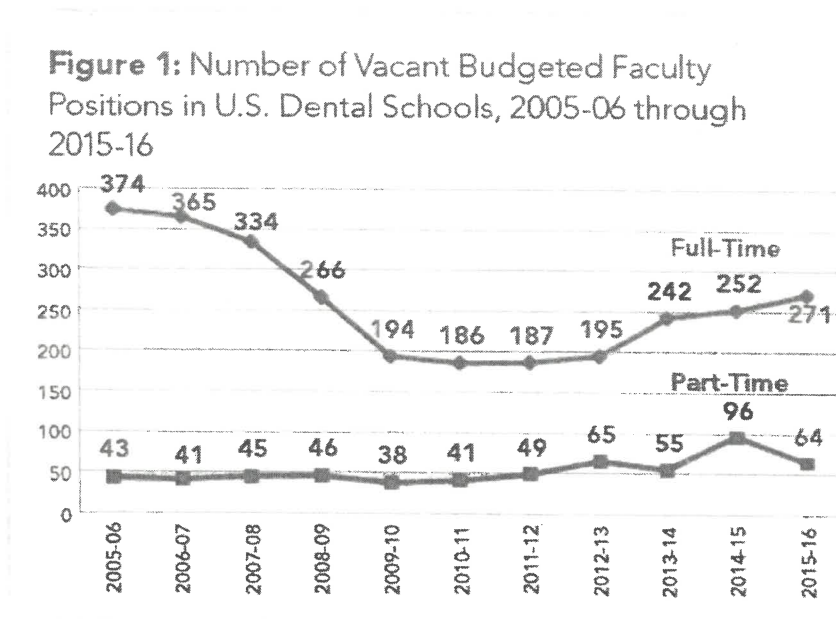


Figure 1

While 2015-16 data show that over **40%** of full-time faculty are over **60 years old**, data from the 2017 ADEA Survey of Dental School Seniors show that, upon graduation, only **0.4%** of dental school seniors planned to enter academia at a dental school, even though **58%** expressed an interest in teaching at some point in their careers (Figure 2). Faculty diversity shows changing trends with women currently outnumbering men in the cohort under 40 years of age. While racial and ethnic diversity among the faculty has improved, there is still much work to do. These statistics reflect the need to promote interest in faculty positions among predoctoral and allied dental students as well as advanced dental education residents and fellows.

Predoctoral and allied dental students, as well as residents, must be made aware of the benefits of academic dentistry and the specific initiatives that will help them explore careers in dental education. **Data indicate that the time to address the future shortage of dental educators is now.**

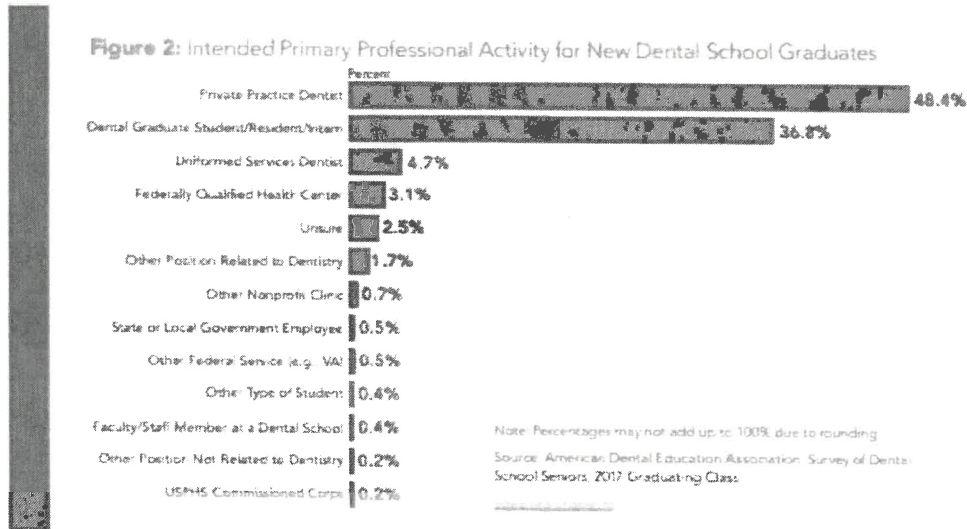


Figure 2

Reference: ADEA Office of Policy, Research and Diversity | Omar A. Contreras, M.P.H.; Sonja Harrison, M.S.W.; Denise Stewart, D.D.S., M.H.S.A.; Jeffery Stewart, D.D.S., M.S.; Richard W. Valachovic, D.M.D., M.P.H.

2. VCU-School of Dentistry Faculty Changing Demographics

VCU Dental School has **87 Full time** faculty members of which **29 are ≥ 60 years old**. A total of **31%** are now at retirement age.

3. VCU-School of Dentistry Shortage of Faculty Members

- Students to faculty ratio
- Many retirements
- Many faculty members are needed for both preclinical and clinical teaching

4. Military Reducing Their Numbers

Military reducing their numbers which reduces the number of retired military dentists teaching in dental schools. Retired military dentists used to be one of the main streams for faculty at VCU School of Dentistry.

“The U.S. Army has had **difficulty recruiting and retaining dentists**, because of declining dental school enrollment, a robust economic environment for dentistry, changes in demographic features of dental providers, and the current operational tempo of the military. Identifying factors associated with recruitment and retention of Army Dental Corps officers is paramount when the changes in the dental profession are taken into account.”

Likelihood of Dental Corps Officers Staying on Active Duty until Retirement

	No. (%)						
	Highly Unlikely	Unlikely	Slightly Unlikely	Neutral	Slightly Likely	Likely	Very Likely
All respondents	86 (35)	44 (18)	24 (10)	36 (15)	17 (7)	22 (9)	14 (6)
Captains	70 (39)	37 (21)	17 (9)	27 (15)	10 (6)	12 (7)	7 (4)
Majors	14 (25)	6 (11)	6 (11)	8 (14)	7 (12)	9 (16)	7 (12)
Lieutenant colonels	7 (7)	3 (3)	3 (3)	7 (7)	6 (6)	12 (12)	63 (63)
Colonels	3 (2)	2 (1)	1 (1)	4 (3)	4 (3)	7 (5)	134 (86)
Captains/majors							
Female	15 (37)	5 (12)	2 (5)	6 (15)	7 (17)	6 (15)	0
Male	66 (35)	38 (20)	21 (11)	29 (15)	10 (5)	14 (7)	13 (7)
Lieutenant colonels/colonels							
Female	0	2 (10)	1 (5)	1 (5)	1 (5)	0	16 (76)
Male	10 (5)	3 (1)	1 (1)	10 (5)	9 (4)	17 (8)	170 (77)

Reference: *Army Dental Officer Retention: LTC Jeffrey G. Chaffin, DC USA**; *COL Priscilla H. Hamilton, DC USA**; *MG Russell J. Czerw, DC USA† MILITARY MEDICINE, 173, 10:1014, 2008*

5. Increasing Number of Advanced Dental Education Programs That are Non-CODA Accredited

- **Programs in Operative Dentistry, Restorative Dentistry, Esthetic Dentistry, Digital Dentistry, Dental Sleep Medicine, Implantology**
- Graduates of advanced training programs in operative dentistry play a role for the dental profession, particularly, in military settings, in research and as faculty in dental education programs.
- These programs aim to graduate dental professionals with the proper knowledge and clinical training to teach principles of contemporary general dentistry.

- These programs are 2-3 year long programs with didactic and clinical components. Some are dual degree programs where graduates obtain a clinical certificate and a masters degree in a given discipline.
- There are more than 15 programs in the United States.

Note: please refer to the attached documents for an example of an Advanced Dental Education Program in Operative Dentistry and Biomaterials from the University of North Carolina at Chapel Hill.

6. Presence of Well Rounded Foreign Trained Dentist as Pioneers in The Dental Field

Examples of talented faculty members from other respected schools falling under this category:

- **Dr. Andre Ritter**, Professor and Chair of Cariology and Comprehensive Care, School of Dentistry, New York University and Author of the top selling dental book "Sturdevant's Art and Science of Operative Dentistry"
- **Dr. Marcos Vargas**, Professor, Department of Family Dentistry, School of Dentistry, University of Iowa
- **Dr. Markus Blatz**, Professor and Chair of Restorative Dentistry, School of Dentistry, University of Pennsylvania
- **Dr. Patricia Pereira**, Associate Dean of Academic Affairs, School of Dentistry, University of Florida
- **Dr. Taiseer Sulaiman**, Director of Biomaterials, School of Dentistry, University of North Carolina and an International Speaker

7. Faculty/Instructors License at Other Faculty Competing States

Many other states have adopted the same suggested change a long time ago. Schools in those states have managed to recruit and retain excellent faculty for their programs.

Example states:

- North Carolina
- Florida
- Massachusetts
- Texas
- Ohio
- Colorado
- Oregon

Note: please refer to Dr. Chadwick's letter attached to this document. (Dr. Chadwick is the Dean of the School of Dentistry at East Carolina University and Former ADA president)

8. CODA Started the Implementation of Standard 3-1-Faculty and Staff

CODA Standard 3-1- “The number, distribution, and qualifications of faculty and staff must be sufficient to meet the dental school’s stated purpose/mission, goals and objectives, at all sites where required educational activity occurs. The faculty member responsible for the specific discipline must be qualified through appropriate knowledge and experience in the discipline as determined by the credentialing of the individual faculty as defined by the program/institution.

Intent: Faculty should have knowledge and experience at an appropriate level for the curriculum areas for which they are responsible. The collective faculty of the dental school should have competence in all areas of the dentistry covered in the program.”

To be compliant with this standard, the school of dentistry needs to be able to attract and hire people who have training in a non-coda accredited specialties to teach them at the dental schools. Those people need a faculty license to provide clinical education to our students and care to our patients.

9. Parameters for the Suggested Change

- Dentists who would be granted this license shall have at least 2 years of clinical training in the US from an ADA accredited dental institution.
- Dentists who practice under this category shall not be granted a full Virginia license by credentials.
- Dentists who practice under this category shall be peer reviewed by a committee formed at the dental school. Members of this committee shall be fully licensed by the state of Virginia.



School of Dental Medicine
Coryell E. Ross Hall | 1851 MacGregor Downs Road | Mail Stop 701
East Carolina University | Greenville, NC 27834-4354
252-737-7000 office | 252-737-7049 fax | www.ecu.edu/dental

May 24, 2021

Clara M. Spatafore, DDS, MS
Interim Dean
School of Dentistry
Virginia Commonwealth University
Richmond, Virginia 23298-0566

Dear Dr. Spatafore,

I appreciate the opportunity to provide some information regarding the benefit of a provision in the North Carolina Dental Practice Act that provides a pathway to licensure for individuals who are licensed in the US or in any country, territory or other jurisdiction and meet the credentialing requirements of our dental school, to acquire an instructor's license. I have copied the applicable portion of the NC Practice Act below for your reference:

§ 90-29.5. Instructor's license.

- (a) The Board may issue an instructor's license to a person who is not otherwise licensed to practice dentistry in this State if the person meets both of the following conditions:
- (1) Is licensed to practice dentistry anywhere in the United States or in any country, territory, or other recognized jurisdiction.
 - (2) Has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated; such dental school or academic medical center shall be accredited by the American Dental Association's Commission on Accreditation or the Joint Commission on Accreditation of Health Care Organizations.
- (b) The holder of an instructor's license may teach and practice dentistry:
- (1) In or on behalf of a dental school or college offering a doctoral degree in dentistry operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners;
 - (2) In connection with an academic medical center; and
 - (3) At any teaching hospital adjacent to a dental school or an academic medical center.
- (c) Application for an instructor's license shall be made in accordance with the rules of the North Carolina State Board of Dental Examiners. On or after January 1, 2003, all dentists previously practicing under G.S. 90-29(c)(3) shall be granted an instructor's license upon application to the Board and payment of the required fee. The holder of an instructor's license shall be subject to the provisions of this Article. (1979, 2nd Sess., c. 1195, s. 11; 2002-37, s. 7.)

This provision has been very beneficial in attracting well-qualified foreign dentists, who are licensed in their home country to become faculty members at our school. Faculty with an instructor's license can teach and practice dentistry in our school or participate in any of our educational programs (e.g., an extramural school service events). The use of this provision has been extremely successful in helping us recruit and retain excellent faculty for our educational programs, and we would highly recommend it for your consideration.

If you need additional information or would like to discuss our use of instructor's licenses, please let me know.

Sincerely

D. Gregory Chadwick, DDS, MS
Dean



ADAMS SCHOOL
OF DENTISTRY

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
ADAMS SCHOOL OF DENTISTRY

919-537-3737

Koury Oral Health Sciences Building
Campus Box 7450
365 South Columbia Street | Chapel Hill, NC 27599-7450
dentistry@unc.edu

September 9, 2019

To Whom It May Concern:

Dr. Awab Abdulhaq Abdulmajeed has completed all requirements for a Certificate in Operative Dentistry & Biomaterials issued by the Adams School of Dentistry and a Master of Science degree in Operative Dentistry and Biomaterials issued by the Graduate School of the University of North Carolina at Chapel Hill. The requirements for this dual program are:

Overview: Completion of all of the following requirements: (1) academic; (2) clinical; (3) teaching assistantships; (4) comprehensive examination(s); and (5) Master's degree thesis. All of the requirements described below must be successfully completed in order to graduate from the Program.

Academic Requirement: Successful completion of all core courses and discipline-specific courses as listed in the Program curriculum.

Clinical Requirement: Successful completion of all clinical requirements, which includes patient care during the course of the Program. These clinical requirements included

1. Direct restorations with different restorative materials
2. CAD/CAM restorations
3. Esthetic enhancement and smile makeover (Bleaching and Ceramic Veneers)
4. Full coverage indirect restorations
5. Partial coverage indirect restorations (Inlays, Onlays)
6. Implant supported fixed dental prosthesis
7. Removable partial dentures

Graduate Teaching Assistantship Assignments

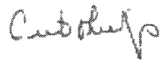
Comprehensive Examination Requirement: A passing score on the comprehensive written and/or oral examination

Master's Degree Thesis Requirement: Successful completion of all thesis research work, including approval of the final thesis document by a thesis committee, and an oral thesis defense.

Dr. Abdulmajeed has completed and complied with additional, applicable University, Graduate School, UNC School of Dentistry, and Program requirements and policies in order to graduate from the Program.

Please feel free to contact me if you have questions ceib_phillips@unc.edu

Sincerely,



Ceib Phillips, MPH, PhD

Associate Dean for Advanced Education/Graduate Programs

Interim Program Director, Operative Dentistry & Biomaterials

Program Director, Oral & Craniofacial Biomedicine

Professor, Department of Orthodontics

School of Dentistry

University of North Carolina – Chapel Hill

919-537-3373

UNAPPROVED

VIRGINIA BOARD OF DENTISTRY

MINUTES

SPECIAL SESSION – TELEPHONE CONFERENCE CALL

- CALL TO ORDER:** The meeting of the Board of Dentistry was called to order at 5:18 p.m., on August 5, 2021, at the Department of Health Professions, Perimeter Center, 2nd Floor Conference Center, Board Room 1, 9960 Mayland Drive, Henrico, VA 23233.
- PRESIDING:** Augustus A. Petticolas, Jr., D.D.S., President
- MEMBERS PRESENT:** Patricia B. Bonwell, R.D.H., PhD
Nathaniel C. Bryant, D.D.S.
Sandra J. Catchings, D.D.S.
Sultan E. Chaudhry, D.D.S.
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:** Jamiah Dawson, D.D.S.
- QUORUM:** The Board members were polled, and the Board was unable to achieve a quorum for a meeting at DHP to discuss this matter. With nine members present, a quorum was established.
- STAFF PRESENT:** Jamie C. Sacksteder, Deputy Executive Director
Donna M. Lee, Discipline Case Manager
- OTHERS PRESENT:** James E. Rutkowski, Assistant Attorney General, Board Counsel
James E. Schliessmann, Senior Assistant Attorney General
Rebecca Smith, Adjudication Specialist
- Rodney Mayberry, D.D.S.
Case No.: 207945** The Board received information from Mr. Schliessmann in order to determine if Dr. Mayberry's impairment from substance abuse and/or mental or physical incompetence constitute a substantial danger to public health and safety. Mr. Schliessmann reviewed the case and responded to questions.
- Closed Meeting:** Dr. Catchings moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(27) of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Case No. 207945. Additionally, Dr. Catchings moved that Ms. Sacksteder, Ms. Lee, and 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 that the Board certify that it 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:

Dr. Bonwell moved that the Board summarily suspend Dr. Mayberry's right to renew his license to practice dentistry in the Commonwealth of Virginia and his moderate sedation permit; and schedule him for a formal hearing. The motion was seconded and passed unanimously.

ADJOURNMENT:

With all business concluded, the Board adjourned at 5:35 p.m.

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

Sandra K. Reen, Executive Director

Date

Date

UNAPPROVED

VIRGINIA BOARD OF DENTISTRY

MINUTES

SPECIAL SESSION – TELEPHONE CONFERENCE CALL

- CALL TO ORDER:** The meeting of the Board of Dentistry was called to order at 5:38 p.m., on August 5, 2021, at the Department of Health Professions, Perimeter Center, 2nd Floor Conference Center, Board Room 1, 9960 Mayland Drive, Henrico, VA 23233.
- PRESIDING:** Augustus A. Petticolas, Jr., D.D.S., President
- MEMBERS PRESENT:** Patricia B. Bonwell, R.D.H., PhD
Nathaniel C. Bryant, D.D.S.
Sandra J. Catchings, D.D.S.
Sultan E. Chaudhry, D.D.S.
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:** Jamiah Dawson, D.D.S.
- QUORUM:** The Board members were polled, and the Board was unable to achieve a quorum for a meeting at DHP to discuss this matter. With nine members present, a quorum was established.
- STAFF PRESENT:** Jamie C. Sacksteder, Deputy Executive Director
Donna M. Lee, Discipline Case Manager
- OTHERS PRESENT:** James E. Rutkowski, Assistant Attorney General, Board Counsel
- Darlene Nicoletti, D.D.S.
Case No.: 213765** The Board received information from Ms. Sacksteder regarding a proposed consent order pertaining to Dr. Nicoletti that would modify her March 31, 2021 Order due to Dr. Nicoletti's inability to comply with the terms and conditions of the March 31, 2021 Order.
- Closed Meeting:** Dr. Catchings moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(27) of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Case No. 213765. Additionally, Dr. Catchings moved that Ms. Sacksteder, Ms. Lee, and 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 that the Board certify that it 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:

Dr. Bonwell moved that the Board offer the proposed consent order to Dr. Nicoletti. The motion was seconded and passed unanimously.

ADJOURNMENT:

With all business concluded, the Board adjourned at 5:55 p.m.

Augustus A. Petticoles, Jr., D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date

American Dental Examiners Annual Meeting

The ADEX annual meeting was held on August 6-7, 2021 at the Rosemount Hotel in Chicago, IL. This meeting was the first in person meeting that was held since the beginning of the COVID 19 pandemic. The meeting is held to discuss business as it pertains to the ADEX dental and dental hygiene exam. CDCA and WREB testing agencies have joined to form one organization. That leaves three additional testing agencies in the United States, CITA, CRTA, and CRDTS. CITA and CDCA/WREB are the two agencies that administer the ADEX exam.

The election of officers was held, and the present officers were re-elected for one more year due to their eligibility to serve an additional one year term. The recommendation for changes to the exam was focused on grammatical clarification issues, which means the examination will basically stay the same. The only significant change was to the restorative portion of the Compodont, which involves adding 3 anterior and 3 posterior teeth with carious like lesion. This was put in place to prevent or slow down the gaming of the exam which was being performed on the internet.

The next annual meeting is planned for the first Friday and Saturday in August of 2022 at the same location. I would like to express my gratitude to the Board for allowing me to represent Virginia at this meeting.

Respectfully,

Dr. Nathaniel Bryant

**VIRGINIA BOARD OF DENTISTRY
MINUTES of the NOMINATING COMMITTEE MEETING
August 13, 2021**

- TIME AND PLACE:** The meeting was called to order at 11:12 a.m., on Friday, August 13, 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:** Margaret F. Lemaster, R.D.H.
J. Michael Martinez de Andino
- STAFF PRESENT:** Sandra K. Reen, Executive Director
Jamie C. Sacksteder, Deputy Executive Director
- QUORUM:** With all members present, a quorum was established.
- NOMINATIONS:** The Committee reviewed the roster of Board members and noted that the terms of three members are slated to expire in 2021. Dr. Petticolas is completing his second term and not eligible for reappointment. Dr. Catchings and Dr. Dawson are completing their first terms and are eligible for reappointment.
- Following discussion the nominations were addressed as follows:
- Ms. Lemaster moved to nominate Dr. Bryant for president. The motion was seconded and passed.
- Mr. Martinez moved to nominate Dr. Catchings for vice-president. The motion was seconded and passed.
- Ms. Lemaster moved to nominate Dr. Bonwell for secretary. The motion was seconded and passed.
- Given the possibilities that a nominee may not accept the nomination and that new members could be appointed prior to the September 10, 2021 Board meeting, the Committee agreed by consensus to propose alternates for each office as follows:
- Dr. Bonwell as the alternate for president, vice-present and Dr. Dawson as the alternate for secretary.
- APPROVAL OF MINUTES:** The minutes from the Nominating Committee Meeting on August 27, 2020 were approved.

Virginia Board of Dentistry
Nominating Committee Meeting
August 13, 2021

ADJOURNMENT: With all business concluded, the Committee adjourned at 11:40 a.m.

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

Sandra K. Reen, Executive Director

Date

Date

**Agenda Item: Regulatory Actions - Chart of Regulatory Actions
As of August 25, 2021**

Board of Dentistry		
Chapter		Action / Stage Information
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Training and supervision of digital scan technicians</u> [Action 5600] Proposed - <i>DPB Review in progress</i>
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Amendment to restriction on advertising dental specialties</u> [Action 4920] Proposed - <i>At Governor's Office for 710 days</i>
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Waiver for e-prescribing</u> [Action 5382] Proposed - <i>Register Date: 5/10/21</i> <i>Comment closed: 7/9/21</i> <i>Board to adopt final regulation: 9/10/21</i>
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Technical correction</u> [Action 5198] Fast-Track - <i>At Governor's Office for 647 days</i>
[18 VAC 60 - 30]	Regulations Governing the Practice of Dental Assistants	<u>Training in infection control</u> [Action 5505] Proposed - <i>AT Attorney General's Office</i> [Stage 9316]
[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] <u>NOIRA</u> - <i>At Governor's Office for 76 days</i>

Agenda Item: Board action on waiver of electronic prescribing

Included in your agenda package are:

Copy of announcement on Townhall

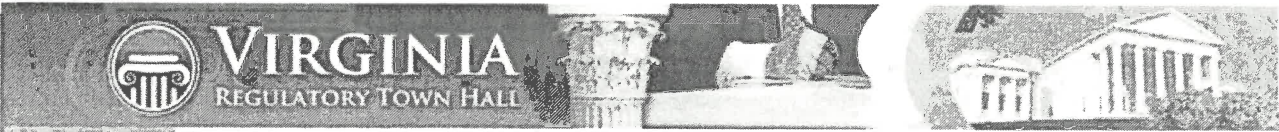
(There were no public comments)

Copy of proposed regulations (identical to emergency regulations)

Board action:

To adopt the final regulations as included in the agenda package

Virginia.gov Agencies | Governor



Agency: Department of Health Professions
Board: Board of Dentistry
Chapter: Regulations Governing the Practice of Dentistry [18 VAC 60 - 21]

Action: Waiver for e-prescribing

Proposed Stage

Action 5382 / Stage 9068

[Edit Stage](#) [Withdraw Stage](#) [Go to RIS Project](#)

Documents

Proposed Text	5/4/2021 3:06 pm	Sync Text with RIS
Agency Background Document	9/16/2020 (modified 10/8/2020)	Upload / Replace
Attorney General Certification	10/5/2020	
DPB Economic Impact Analysis	11/18/2020	
Agency Response to EIA	12/5/2020	Upload / Replace
Governor's Review Memo	4/12/2021	
Registrar Transmittal	4/19/2021	

Status

Changes to Text	The proposed text has changed from that of the emergency stage .
Incorporation by Reference	No
Exempt from APA	No, this stage/action is subject to Article 2 of the <i>Administrative Process Act</i>
Attorney General Review	Submitted to OAG: 9/16/2020 Review Completed: 10/5/2020 Result: Certified
DPB Review	Submitted on 10/6/2020 Economist: Oscar Ozfidan Policy Analyst: Jeannine Rose Review Completed: 11/18/2020
Secretary Review	Secretary of Health and Human Resources Review Completed: 1/4/2021
Governor's Review	Review Completed: 4/12/2021 Result: Approved
Virginia Registrar	Submitted on 4/19/2021 The Virginia Register of Regulations Publication Date: 5/10/2021 Volume: 37 Issue: 19
Public Hearings	06/11/2021 9:05 AM
Comment Period	Ended 7/9/2021

0 comments

Contact Information

Name / Title:	Sandra Reen / <i>Executive Director</i>
Address:	9960 Mayland Drive Suite 300 Richmond, VA 23233
Email Address:	sandra.reen@dhp.virginia.gov
Telephone:	(804)367-4437 FAX: (804)527-4428 TDD: (-)

This person is the primary contact for this board.

*This stage was created by Elaine J. Yeatts on 09/16/2020 at 10:01am
This stage was last edited by Oscar Ozfidan on 11/18/2020 at 3:11pm*

Virginia.gov Agencies | Governor



Proposed Text

[highlight](#)

Action: Waiver for e-prescribing

Stage: Proposed

5/4/21 3:06 PM [latest] ▼

18VAC60-21-107 Waiver for electronic prescribing

A. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in subsection C of § 54.1-3408.02.

B. Upon written request, the board may grant a one-time waiver of the requirement of subsection A of this section for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

Virginia Board of Dentistry

Educational Requirements for Dental Assistants II

Excerpts of Applicable Law and Regulation

- §54.1-2729.01 of the Code of Virginia permits the Board to prescribe the education and training requirements that must be completed for a person to qualify for registration as a dental assistant II.

Educational Requirements

- ~~Every applicant for registration must complete~~ Every applicant for registration shall complete a competency-based program from an educational institution that meets the requirements of 18VAC60-30-116 and includes all of the following. 18VAC60-30-120 (B) (1-4):
 - Didactic coursework in dental anatomy that includes basic histology, understanding of the periodontium and temporal mandibular joint, pulp tissue and nerve innervation, occlusion and function, muscles of mastication, and any other item related to the restorative dental process.
 - Didactic coursework in operative dentistry to include materials used in direct and indirect restorative techniques, economy of motion, fulcrum techniques, tooth preparations, etch and bonding techniques and systems, and luting agents.
 - Laboratory training to be completed in the following modules:
 - No less than 15 hours of placing, packing, carving, and polishing of amalgam restorations, placement of a non-epinephrine retraction cord, and pulp capping procedures and no less than six class I and six class II restorations completed on a manikin simulator to competency;
 - No less than 40 hours of placing and shaping composite resin restorations, placement of a non-epinephrine retraction cord, and pulp capping procedures, and no less than 12 class I, 12 class II, five class III, five class IV, and five class V restorations completed on a manikin simulator to competency; and
 - At least 10 hours of making final impressions, placement of a non-epinephrine retraction cord, final cementation of crowns and bridges after preparation, and adjustment and fitting by the dentist, and no less than four crown impressions, two placements of retraction cord, five crown cementations, and two bridge cementations on a manikin simulator to competency.
 - Clinical experience applying the techniques learned in the preclinical coursework and laboratory training in the following modules:
 - At least 30 hours of placing, packing, carving, and polishing of amalgam restorations, placement of a non-epinephrine retraction cord, and no less than six class I and six class II restorations completed on a live patient to competency;
 - At least 60 hours of placing and shaping composite resin restorations, placement of a non-epinephrine retraction cord, and no less than six class I,

Delegation to dental assistants II

- Duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience, and examinations specified in 18VAC60-30-120, 18VAC60-30-60.

Registration by Endorsement as a dental assistant II

- Every applicant for registration as a dental assistant II by endorsement shall hold a credential, registration, or certificate with qualifications substantially equivalent in hours of instruction and course content to those set forth in 18VAC60-30-120 or if the qualifications were not substantially equivalent the dental assistant can document experience in the restorative and prosthetic expanded duties set forth in 18VAC60-30-60 for at least 24 of the past 48 months preceding application for registration in Virginia. 18VAC60-30-140 (A) (3).

Virginia Board of Dentistry
Guidance on Radiation Certification

Any person who (1) completed a radiation safety course and examination through a provider previously recognized by the board to offer the course and (2) registered with the board prior to May 11, 2011 by showing satisfactory completion of the course and examination continues to be qualified to expose dental x-ray film.

Beginning on May 11, 2011 the Board amended its regulations on radiation certification to require:

- (i) Satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene or dentistry accredited by the Commission on Dental Accreditation of the American Dental Association,
- (ii) Certification by the American Registry of Radiologic Technologists,
or
- (iii) Satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety examination given by the Dental Assisting National Board.

Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

See 18VAC60-21-170, 18VAC60-25-80, and 18VAC60-30-80

VIRGINIA BOARD OF DENTISTRY

Compilation of Provisions in the Code of Virginia Addressing Dental Practice, Practice of Dentistry by Professional Business Entities, and Practice Locations and the Duties Restricted to Dentists in the Code of Virginia and the Regulations Governing the Practice of Dentistry

The following sections of the Code of Virginia and Regulations Governing the Practice of Dentistry have been identified as applicable to the subject topics. The listing is not intended to be all-inclusive but should be regarded as a reference. Every licensed dentist should be familiar with these and any other legal responsibilities relating to the practice of dentistry that are included in the Code of Virginia and regulations.

DENTAL PRACTICE

- **§54.1-2700** - "Dentistry" means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent and associated structures and their impact on the human body.
- **§54.1-2711** – 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.~~
 F. No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist.

PRACTICE OF TELEDENTISTRY

§54.1-2711 - 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.

PRACTICE OF DENTISTRY BY PROFESSIONAL BUSINESS ENTITIES

- **§54.1-2717 - A.** No corporation shall be formed or foreign corporation domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional corporation as permitted by Chapter 7 (§ 13.1-542 et seq.) of Title 13.1.
B. No limited liability company shall be organized or foreign limited liability company domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional limited liability company as permitted by Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1.
C. Notwithstanding the provisions of subsections A and B, dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A of § 54.1-2715.
- **§54.1-2718 - A.** No person shall practice, offer to practice, or hold himself out as practicing dentistry, under a name other than his own. This section shall not prohibit the practice of dentistry by a partnership under a firm name, or a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a firm name,

or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified in subsection A of § 54.1-2715.

B. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:

1. The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist's name.
2. Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.
3. The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.
4. Marquee signage, web page addresses, and email addresses are not considered to be advertisements and may be limited to the trade name adopted for the practice.

PRACTICE LOCATIONS

- **§ 54.1-2708.3** -No person shall operate a mobile dental clinic or other portable dental operation without first registering such mobile dental clinic or other portable dental operation with the Board, except that the following shall be exempt from such registration requirement: (i) mobile dental clinics or other portable dental operations operated by federal, state, or local government agencies or other entities identified by the Board in regulations; (ii) mobile dental clinics operated by federally qualified health centers with a dental component that provides dental services via mobile model to adults and children within 30 miles of the federally qualified health center; (iii) mobile dental clinics operated by free health clinics or health safety net clinics that have been granted tax-exempt status pursuant to § 501(c)(3) of the Internal Revenue Code that provide dental services via mobile model to adults and children within 30 miles of the free health clinic or health safety net clinic; and (iv) mobile dental clinics that provide dental services via mobile model to individuals who are not ambulatory and who reside in long-term care facilities, assisted living facilities, adult care homes, or private homes.
- **§54.1-2709.4.B(4)** – requires health care institutions licensed by the Commonwealth to report any type of disciplinary action taken against an oral and maxillofacial surgeon.
- **§54.1-2711.1** – Temporary licenses for persons enrolled in advanced dental education programs authorize the holder to perform patient care activities associated with the program in which he is enrolled that take place only within educational facilities owned or operated by, or affiliated with, the dental school or program. Temporary licenses issued pursuant to this section shall not authorize a licensee to practice dentistry in nonaffiliated clinics or private practice settings.

- **§54.1-2712(3)** - Dental students who are enrolled in accredited D.D.S. or D.M.D. degree programs performing dental operations, under the direction of competent instructors (i) within a dental school or college, dental department of a university or college, or other dental facility within a university or college that is accredited by an accrediting agency recognized by the United States Department of Education; (ii) in a dental clinic operated by a nonprofit organization providing indigent care; (iii) in governmental or indigent care clinics in which the student is assigned to practice during his final academic year rotations; (iv) in a private dental office for a limited time during the student's final academic year when under the direct tutorial supervision of a licensed dentist holding appointment on the dental faculty of the school in which the student is enrolled; or (v) practicing dental hygiene in a private dental office under the direct supervision of a licensed dentist holding appointment on the dental faculty of the school in which the student is enrolled;
- **§54.1-2712.1.B(1)** - A person holding a restricted volunteer license under this section shall only practice in public health or community free clinics that provide dental services to underserved populations.
- **§54.1-2713.C** – a faculty license permits the holder to perform all activities that a person licensed to practice dentistry would be entitled to perform and that are part of his faculty duties, including all patient care activities associated with teaching, research, and the delivery of patient care, which take place only within educational facilities owned or operated by or affiliated with the dental school or program.
- **§54.1-2715(A)** - temporary permits may be issued to dentists who serve as clinicians in dental clinics operated by:
 - (a) the Virginia Department of Corrections,
 - (b) the Virginia Department of Health,
 - (c) the Virginia Department of Behavioral Health and Developmental Services, or
 - (d) a Virginia charitable corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services:
 - (i) as a federal qualified health center designated by the Centers for Medicare and Medicaid Services or
 - (ii) at a reduced or sliding fee scale or without charge.
- **§54.1-2716** - It shall be unlawful for any dentist to practice his profession in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice dentistry in such commercial or mercantile establishment. This section shall not prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by a dentist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any dentist who violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities or services unrelated to the practice of dentistry or the other healing arts.

DUTIES OF HEALTH PROFESSIONALS

- **§ 32.1-127.1:03.A.** There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.
- **§ 32.1-127.1:03.B.**
 - "Health care entity" means any health care provider, health plan or health care clearinghouse.
 - "Health care provider" means those entities listed in the definition of "health care provider" in § [8.01-581.1](#), except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified, registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.
- **§ 8.01-581.1.**
 - "Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse or a person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact, nurse practitioner, optometrist, podiatrist, physician assistant, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor, licensed marriage and family therapist, licensed dental hygienist, health maintenance organization, or emergency medical care attendant or technician who provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination; (v) a professional limited liability company comprised of members as described in subdivision A 2 of § 13.1-1102; (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily renders health care services; or (vii) a director, officer, employee, independent contractor, or agent of the persons or entities referenced herein, acting within the course and scope of his employment or engagement as related to health care or professional services.
- **§ 54.1-2403.3** Medical records maintained by any health care provider as defined in § 32.1-127.1:03 shall be the property of such health care provider or, in the case of a health care provider employed by another health care provider, the property of the employer. Such health care provider shall release copies of any such medical records in compliance with § 32.1-127.1:03 or § 8.01-413, if the request is made for purposes of litigation, or as otherwise provided

- **§ 54.1-2404.** Upon the request of any of his patients, any health care provider licensed or certified by any of the boards within the Department, except in the case of health care services as defined in Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2, shall provide to such patient an itemized statement of the charges for the services rendered to the requesting patient regardless of whether a bill for the services which are the subject of the request has been or will be submitted to any third party payer including medical assistance services or the state/local hospitalization program.
- **§ 54.1-2405.A.** No person licensed, registered, or certified by one of the health regulatory boards under the Department shall transfer records pertaining to a current patient in conjunction with the closure, sale or relocation of a professional practice until such person has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area, as specified in § 8.01-324.

DUTIES RESTRICTED TO DENTISTS BY REGULATION

- **18VAC60-21-60.A** - A dentist is responsible for conducting his practice in a manner that safeguards the safety, health, and welfare of his patients and the public by...
- **18VAC60-21-90.A** - A dentist shall maintain complete, legible, and accurate patient records for not less than six years from the last date of service for purposes of review by the board...
- **18VAC60-21-110** - A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services, additional dental hygienists to practice under general supervision in a free clinic or a public health program, or on a voluntary basis.
In accordance with § 54.1-2724 of the Code of Virginia, no dentist shall employ more than two dental hygienists who practice under remote supervision at one time.
- **18VAC60-21-120.A** - In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter and the Code.
- **18VAC60-21-130** - Only licensed dentists shall perform the following duties:
 1. Final diagnosis and treatment planning;
 2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;
 3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-25-100, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
 4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;
 5. Operation of high speed rotary instruments in the mouth;
 6. Administering and monitoring conscious/moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and Part VI (18VAC60-21-260 et seq.) of this chapter;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;
8. Final positioning and attachment of orthodontic bonds and bands; and
9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

Virginia Board of Dentistry
Policy on
DEATH OR RETIREMENT OF A DENTIST or
SELLING OR CLOSING OF A DENTAL PRACTICE

Excerpts of Applicable Law, Regulation and Guidance

- A dentist must give notice and provide records when closing, selling or relocating a practice. 18VAC60-21-90 (F)
- A dentist shall not transfer records pertaining to a current patient in conjunction with the closure, sale or relocation of their dental office until the dentist has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area, as specified in § 8.01-324. § 54.1-2405(A)
- Records shall not be abandoned or otherwise left in the care of someone who is not licensed by the board except that, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a licensed dentist, are sent to the patients of record, or are destroyed. 18VAC60-21-90 (G)
- Patient confidentiality must be preserved when records are destroyed. 18VAC60-21-90 (H)

Patient Notification

Notification to patients should occur as soon as possible to assist with continued patient care upon the death or retirement of the dentist, or the sale or closure of a dental practice.

Required guidelines include:

- Notifying the patient via mail at the last known address § 54.1-2405(A)
- In accordance with § 54.1-2405(A), publishing the prior notice in a newspaper of general circulation within the provider's practice area that meet the below requirements, as specified in §8.01-324:
 - Have a bona fide list of paying subscribers;
 - Have been published and circulated in printed form at least once a week for at least 50 of the preceding 52 weeks;
 - Provide general news coverage of the area in which the notice is required to be published;
 - Be printed in the English language; and
 - Have a periodicals mailing permit issued by the United States Postal Service (USPS). If the newspaper has such a mailing permit, it must publish the USPS Statement of Ownership (Form 3526) in such newspaper at least once per calendar year and maintain a copy of such form that is available for public inspection during regular business hours.¹

Suggested guidelines include:

- Calling patients with scheduled appointments to enable patients to find another provider or make an informed decision to stay with another provider within the same practice, if applicable.

¹There are exceptions listed in §8.01-324

- Consider changing any telephone answering message or website response to advise patients contacting the dental office that the dentist's appointments are being canceled and the dentist will not be scheduling any additional appointments.
- Providing contact information of any other provider who has agreed to provide dental care to the dentist's patients. Any answering message or website response should include the other provider's contact information.
- Sending the required notification letters via Registered Mail with Return Receipt requested, to the dentist's patients of the death or retirement of the dentist or closure or sale of the dental practice. The dental office should retain the return receipts to have proof that notifications were sent. The American Dental Association provide example notification letters for assistance. ²
- Facilitating the transfer of care by explaining how a patient can find a new dentist. This could include but is not limited to:
 - informing patients of any dentists within the practice, if the practice is not closing;
 - contacting insurance companies to get names of other providers in their area;
 - conducting Internet searches to assist in identifying other providers;
 - reviewing phone book information; and
 - contacting dental associations for potential referrals.
- Providing patients with information about their dental records (18VAC60-21-90 (F)). This would include:
 - how a patient can obtain a copy of their dental records (please note that records cannot be withheld because the patient has an outstanding financial obligation) 18VAC60-21-90 (D). ;
 - providing contact information where dental records are maintained;
 - informing patients of any charges for obtaining or sending a copy of dental records, 18VAC60-21-90 (E). ; and
 - the current dental office's record retention policy. 18VAC60-21-90.A.(1-3)

Patient Record Retention

Dental patient record retention after the death or retirement of a dentist or the sale or closing of a dental practice will create regulatory concerns if the records are not properly maintained. This includes the length and manner of retention as discussed below:

- It is required that dentists keep records for at least six years after the last service was provided. Additionally, records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child. 18VAC60-21-90.A.(1-3)
- Virginia and HIPAA require that patients have access to their dental records and that the records be confidentially maintained. 18VAC60-21-90. (C) and (H)
- If the deceased dentist worked in a group practice, then the group could keep the deceased dentist's patient records with its other patient records.

² American Dental Association "A Guide to Closing a Dental Practice"

- If the deceased dentist was a solo practitioner, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a licensed dentist, are sent to the patients of record, or are destroyed. 18VAC60-21-90 (G)
- If the patient records are to be released or transferred, then a release form for releasing the record should be signed by the patient and made part of the dental record.
- If the patient records are destroyed, then confidentiality must be maintained. 18VAC60-21-90 (H)

Professional Liability Issues

Exposure to professional liability can continue after the closure, transfer, or sale of a dental practice. In Virginia, the statute of limitations for the filing of a lawsuit for professional liability is 2 years unless a minor is involved (§ 8.01-243.1). However, if in connection with a minor who was less than eight years of age, then the minor will have until his tenth birthday to commence a lawsuit (§ 8.01-243.1). Accordingly, beneficiaries and dental practice office managers may want to verify the dentist's malpractice insurance policy to see if the coverage under the policy is sufficient.

Notification should be sent to the insurer of the death, closure, or transfer of practice. Under an Occurrence Insurance Policy, which normally provides broad coverage, besides notification, and except for potentially requesting a refund for any prepaid premium, no additional action is required. If under a Claims-Made Insurance Policy, then consider obtaining an extended reporting endorsement or tail coverage which will provide continuing protection for a malpractice claim submitted in the future. Additionally, consider an office overhead expense insurance policy that can provide reimbursement for certain monthly office expenses if a dentist is disabled or unable to practice.

Other Notifications

Notifications should be sent to the listed entities below regarding the death or retirement of a dentist, the closure, transfer, or sale of a dental practice. Additionally, other notifications that should be sent include informing of the discontinuation of any administration of controlled substances or of a change of address.

- The Drug Enforcement Agency;
- The Virginia Board of Dentistry;
- Pharmacies - where prescriptions have previously been submitted;
- Insurance Agencies having a policy with the dentist at Issue, including disability, professional liability, and practice Interruption Insurance companies;
- Accountant for the dentist or practice;
- Financial advisor for the dentist;
- Legal counsel hired by the dentist or practice who specializes in healthcare regulatory Issues;
- Colleagues of the dentist;
- Landlord or lease holder of the practice;
- Newspaper and marketing organizations to assist in notifying the public; and
- The Social Security Administration for any request for Medicare coverage or beneficiary benefits.

Note: Each practice is unique and additional organizations may need to be notified.

Staff and Management Personnel

In the event of closing, transferring, or selling of a practice, consideration is needed for maintaining appropriate staff to assist in the process. This could include the hiring of temporary staff to replace any

personnel who may have left the practice in the interim. The needed appropriate staff can assist in continuing to collect payments, sending notifications, handling the daily operation needs up to the closing or transfer date, and addressing patient inquiries. The practice should include a means for providing staff information about their pay and benefits, including any staff retirement or health insurance plan information.

Note: In connection with staff and bill payments, having the spouse, a trusted advisor or partner be given check writing authority will enable bills to be paid during the transition period.

Estate Planning

The concerns raised by the death or retirement of a dentist identify the need for a good and specific estate plan. Planning to protect one's personal estate and dental practice is essential. This can include a will and/or a trust. A will can protect your estate from entering probate court, which is normally where a court makes decisions about the distribution of your assets and names an executor. The probate process can take several months or longer depending on the size of the estate. Additionally, a probate court will assess court fees that will be taken out of the estate. This process is complicated and can impose emotional burdens on the family. However, a will alone may not be enough. A trust may also be needed. A trust can protect your estate and assist in managing your dental practice temporarily upon your death until your practice is sold or transferred. A legal professional who has specific estate expertise and a tax advisor will help with estate planning.

Conclusion

To help avoid the unexpected and emotional distress caused by the death or retirement of a dentist or closing, transfer or sale of a dental practice. It is essential to be prepared to assist your family, staff, and colleagues. This includes proper estate planning, retention of patient records, appropriate notification to patients and organizations, and sufficient professional insurance. Awareness of these issues and advanced planning can help to assure continuity of care of patients and peace of mind to the family.

Additional Resource Information

1. American Dental Association. Guide to Closing a Dental Practice. 2004-2008.
<https://success.ada.org/en/career/closing-a-dental-practice>
2. New York State Dental Association. When a Dentist Dies - A Guide to Widows and Widowers. 2014.
http://www.7dds.org/uploads/knowledge_base/pdf/When_Dentist_Dies.pdf
3. Virginia Dental Association. Understanding the Common Pitfalls of Patient Abandonment. May 17, 2018.
<https://www.vadental.org/vda-hub/2018/05/17/understanding-the-common-pitfalls-of-patient-abandonment>



Virginia Department of
Health Professions
 Board of Dentistry

Disciplinary Board Report

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

January – August 2021

The table below includes all cases that have received Board action since January 1, 2021 through August 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
TOTALS	289	270	45	315

Closed Case with Violations consisted of the following:

Patient Care Related:

- **38 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 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.
- **1 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.

Non-Patient Care Related:

- **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.



Disciplinary Board Report

CCA's

There were 24 CCA's issued from January 1, 2021 to August 31, 2021. The CCA's issued consisted of the following violations:

- **6 Standard of Care:** Diagnosis/Treatment
- **18 Business Practice Issues:** Recordkeeping

Suspensions/Revocations

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

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

CDCA/WREB Webinar August 19, 2021

CDCA/WREB detailed two years of independently evaluated data comparing patient and non-patient-based examinations delivered by The Commission on Dental Competency Assessments and the Western Regional Examining Board. There was little to no difference between patient vs. non-patient-based.

Dental and Dental Hygiene leaders for both examinations detailed the similarities in candidate performance when comparing outcomes of patient-based exams and simulated patient examinations in the 2020 and 2021 exam seasons.

CDCA/WREB state the results offered further support for unified national examination administration with complementary psychomotor clinical and OSCE didactic components.

The now joined agencies will deliver the separate ADEX and WREB examinations through 2022 while preparing to transition to ADEX only in 2023 and beyond.

Key details of the ADEX simulated patient examinations were also shared, including refinements based on field experience to the CompeDont™ tooth, used in the restorative portion of the ADEX examinations in dentistry and the ADEX-approved dental hygiene typodont.