

VIRGINIA BOARD OF DENTISTRY
REGULATORY-LEGISLATIVE COMMITTEE MEETING AGENDA

FRIDAY, MAY 20, 2022

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

<u>TIME</u>		<u>PAGE</u>
1:00 p.m.	Call to Order – Dr. Patricia B. Bonwell, Vice-President, Chair	
	Introduction of Board Members, Staff and Guests	
1:15 p.m.	Public Comment – Dr. Bonwell	
	Approval of Minutes	1-5
	• February 18, 2022	
	Board Discussion Topics	
	• Removal of Pulp Capping as a Delegable Task for a Dental Assistant II	6-8
	• Petition for Rulemaking: Reinstatement Applications	9-15
	• Digital Scan Technician Regulations	16-30
	Next Meeting	
	Adjourn	

**VIRGINIA BOARD OF DENTISTRY
REGULATORY-LEGISLATIVE COMMITTEE MEETING MINUTES
February 18, 2022**

- TIME AND PLACE:** The meeting of the Regulatory-Legislative Committee was called to order at 1:02 p.m., on February 18, 2022
- CALL TO ORDER:** Dr. Bonwell called the meeting to order.
- COMMITTEE MEMBERS PRESENT:** Patricia B. Bonwell, R.D.H., PhD, Chair
J. Michael Martinez de Andino, J.D.
Alf Hendricksen, D.D.S.
Jamiah Dawson, D.D.S.
- COMMITTEE MEMBERS ABSENT:** Joshua Anderson, D.D.S
- OTHER PARTICIPATING BOARD MEMBERS PRESENT:** Nathaniel C. Bryant, D.D.S.
- STAFF PRESENT:** Sandra K. Reen, Executive Director, Board of Dentistry
Jamie C. Sacksteder, Deputy Executive Director, Board of Dentistry
Sally R. Ragsdale, Executive Assistant, Board of Dentistry
Erin Barrett, JD, Senior Policy Analyst, Department of Health Professions
- WORKGROUP PARTICIPANTS PRESENT:** Dr. James Vick representing the VCU School of Dentistry
Dr. Michael Ellis representing the Northern VA Dental Society
Dr. Elsa Matthew representing the VA Academy of Sleep Medicine
Dr. Alex Vaughan representing the Virginia Dental Association
Ms. Kristen D. Robbins representing the Commonwealth Dental Hygienist Society
Dr. Bill Crutchfield representing the Virginia Association of Orthodontists
Ms. Carol A. Walsh, representing the Virginia Dental Assistants Association
- ESTABLISHMENT OF A QUORUM:** With five members of the Committee present, a quorum was established.
Ms. Reen addressed the emergency evacuation procedures.
- PUBLIC HEARINGS:** Dr. Bonwell explained that there are two public hearings today to receive comments on proposed amendments and that copies of the proposed amendments are on the back table. Dr. Bonwell explained the parameters for public comment. She then added that electronic comment can be posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov or sent by email to Elaine.Yeatts@dhp.virginia.gov. All comments will be considered before the Board adopts final regulations at its meeting

scheduled on **June 10, 2022**. Dr. Bonwell stated the comment period on proposed regulations for **Training in Infection Control for Dental Assistants** will close on **March 4, 2022**; and, the comment period on proposed regulations for **Digital Scan Technicians** will close on **April 1, 2022**.

**PUBLIC HEARING
INFECTION CONTROL:**

Dr. Bonwell opened the public comment period to receive comments on proposed amendments relating to **Training in Infection Control for Dental Assistants**.

Misty Mesimer stated she is a certified dental assistant, a registered dental hygienist, an allied dental educator and the author of the petition for rulemaking to require dental assistants to be certified in infection control. She explained the substandard practices she is aware of including recycling sterilization products and misunderstanding of sterilization indicators to explain the importance of training dental assistants. Then Ms. Mesimer read a message she received from a colleague asking questions and expressing concerns about the unsafe sterilization practices in her dental office such as wiping down syringes but not changing the tips with holes in them and cold sterilizing and reusing disposable syringes and tips. Ms. Mesimer concluded by asking the Board to reconsider the "training within 60 days" clause in the proposed regulations and require training when hired so dental assistants are informed about the need to make decisions about infection control.

Debra Vernon spoke on behalf of the Virginia Dental Assistants Association, stating she has worked in private and government practices for 40 years. She said the only way to prevent infections is to be knowledgeable about current guidelines for safe practice. She stated that most of the responsibility for infection control lies with the dental assistant. She said she is an advocate for adoption of certification requirements in infection control for dental assistants.

Tracey Martin spoke on behalf of the Virginia Dental Hygienists Association and for another dental hygienist, Amanda Hill. She expressed their support for requiring certification in infection control as a needed minimum standard for dental assistants.

Dr. Bonwell concluded the hearing on **Training in Infection Control for Dental Assistants**.

**PUBLIC HEARING
DIGITAL SCAN
TECHNICANS:**

Dr. Bonwell opened the public comment period to receive comments on proposed regulations for **Digital Scan Technicians**.

Mercer May, who spoke on behalf of Smile Direct Club, stated the proposed regulations are not consistent with the enacted statute. He said the legislative intent is that 3D photography such as digital scans is not the practice of dentistry. He explained that it was never the intent of the law for a dentist to train and supervise a digital scan technician or to require a digital scan work order. He said the terms "supervision" and "direction" have different meaning and requested clarification to recognize that taking a digital scan is an administrative task. He said there is no requirement for a digital scan work order and that there is limited availability of training.

Glana Noreki, who spoke on behalf of the American Association of Orthodontist, said the AAO supports requiring the dentist to inspect the appliance before the delivery of the appliance. She asked for clarification of the provision for work orders, asking if work orders are required for all digital scans or only those scans done by a digital scan technician. She also asked the Board to not consider legislative intent and to review the law as written.

Dr. Bonwell concluded the public hearing at 1:36 p.m.

PUBLIC COMMENT:

Dr. Bonwell explained that the Committee will now receive public comment on agenda items. She added that written comments were distributed to the Board members and copies were available on the back table for the public.

Dr. Mike Pagano, a member of the American Academy of Sleep Medicine, voiced his support for dentists ordering home sleep studies. He said that a physician should treat sleep apnea, but there are multiple reasons and benefits for dentists to order home testing. He cautioned the Board against regulating the sensors and limiting dentists' ability to order home sleep studies.

APPROVAL OF MINUTES:

Dr. Bonwell asked if there were any edits or corrections to the October 22, 2021 Regulatory-Legislative Committee Meeting minutes. Dr. Hendricksen moved to approve the minutes as presented. The motion passed.

DISCUSSION WITH WORKGROUP ON SERVICES RELATED TO SLEEP STUDIES AND SLEEP APNEA:

Dr. Bonwell thanked the participants for serving on the Workgroup on Services Related to Sleep Studies and Sleep Apnea and asked Ms. Reen to begin the conversation by addressing the information she collected from other boards about provisions on sleep testing and treatment.

Ms. Reen reported that she did a quick, limited survey to obtain information on other states' actions addressing sleep testing. She said the responses received were included as information that may be helpful to the Board in its consideration of a dentist's role in addressing sleep disorders.

Dr. Bonwell asked Dr. Vick to begin the discussion. He reported that VCU does not have an official policy. He stated a diagnosis must come from a physician or a qualified radiologist. He said it is within the scope of practice for dentists to initiate a sleep study and dentists should be able to order a sleep study. In response questions, Dr. Vick replied he has had extensive training at Walter Reed Medical Center; that dentists should review the appliance after fabrication to see how it performs. He added that take home sleep studies are useful.

Dr. Ellis stated that he is an orthodontist with a specialty in sleep study. He said sleep apnea is a medical disorder and that a physician should order testing and read the results. He indicated that there are only two organizations that can certify a dentist as a sleep specialist. In response to questions, Dr. Ellis explained about the certification he received which required over 20 hours of training, a presentation to a panel after treating

20 patients, and taking a 4 hour test. He spoke against taking weekend courses for certification. He stated that he supports the initial order coming from a doctor then the dentists can make the device. He suggested that when the initial order is placed a follow up order can be placed at the same time. He strongly supported doctors and dentists working together on this issue and dentists placing a follow up order for a home sleep study as recommended by the treating physician.

Dr. Matthew stated she did not support dentists ordering a home sleep test. She believes it is outside the scope of dentistry. She does support collaboration between dentists and doctors. She commented that it's not just the matter of ordering a sleep test, but also reviewing patient history, labs and medications, as well as consistency in the equipment used. She earned her qualifications for certification in sleep medicine by completing a year of fellowship training and passing an exam. She supported the need for efficacy studies and a calibration study done by a dentist. She stressed the importance of the follow up sleep studies being the same type of test as used in the initial sleep study. She noted that sometimes the patient is being treated for multiple issues and should periodically return to a physician.

Dr. Vaughan addressed the history of sleep apnea diagnosis, calibration and efficacy as well as treatment and the definitions of terms used in addressing the surrounding issues. He said that calibration and efficacy is the same test and that dentists are often diagnosing, ordering, treating and dispensing. He shared that any physician can order a sleep study test without having received special training, and referred to study results that indicated no statistical difference in the knowledge of sleep apnea between general dentists and physicians. He expressed concerns about over treatment and support for dentists ordering a home sleep study, 2 night studies, requiring more education, and having a medical doctor interpret the results.

Ms. Walsh supports dentists being able to order home sleep tests because more people go routinely to the dentist than doctor. She stated that the results should go to a sleep specialist.

Ms. Robbins supports the collaboration between dentist and doctors. She believes that doctors should order the home sleep study not dentists. She commented that more education is needed for dentists and dental hygienists so that the patient is screened and treated properly for sleep disorders.

Dr. Crutchfield stated airway is an important issue, it is life and quality of life. He believes it should be ordered by the person trained and educated in the area. He cautioned the Board against allowing dentists to order sleep studies because he has seen what corporations have done promoting Invisalign and night guards. He is not supportive of dentists ordering sleep studies.

Dr. Bonwell thanked the participants for their participation and explained that the information they provided will be addressed at the next Board Business meeting on March, 11, 2022.

Dr. Bonwell asked the Committee members to let Ms. Reen know if they are available on May 20, 2022 to convene the planned workgroup for discussion of In-Person Examinations of Patients Receiving Active Appliances.

ADJOURNMENT:

With all business concluded, the Committee adjourned at 3:37 p.m.

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

Sandra K. Reen, Executive Director

Date

Date

Project 7061 - NOIRA

Board of Dentistry

Removal of pulp capping as a delegable task for a DAII

18VAC60-30-120. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or active licensure as a dental hygienist.

B. To be registered as a dental assistant II, a person shall complete a competency-based program from an educational institution that meets the requirements of 18VAC60-30-116 and includes all of the following:

1. 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.

2. 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.

3. Laboratory training to be completed in the following modules:

- a. No less than 15 hours of placing, packing, carving, and polishing of amalgam restorations, placement of a non-epinephrine retraction cord, and indirect pulp capping procedures and no less than six class I and six class II restorations completed on a manikin simulator to competency;

b. No less than 40 hours of placing and shaping composite resin restorations, placement of a non-epinephrine retraction cord, and indirect 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

c. 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.

4. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training in the following modules:

a. 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;

b. 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, six class II, five class III, three class IV, and five class V restorations completed on a live patient to competency; and

c. At least 30 hours of making final impressions ; placement of non-epinephrine retraction cord; final cementation of crowns and bridges after preparation, 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 live patient to competency.

5. Successful completion of the following competency examinations given by the accredited educational programs:

a. A written examination at the conclusion of didactic coursework; and

b. A clinical competency exam.

C. An applicant may be registered as a dental assistant II with specified competencies set forth in subdivision a, b, or c of subdivisions B 3 and B 4 of this section.



COMMONWEALTH OF VIRGINIA

Board of Dentistry

9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

(804) 367-4538 (Tel)
(804) 527-4428 (Fax)

Petition for Rule-making

The Code of Virginia (§ 2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition. If the board has not met within that 90-day period, the decision will be issued no later than 14 days after it next meets.

Please provide the information requested below. (Print or Type)

Petitioner's full name (Last, First, Middle Initial, Suffix.)

Joyce Ann Turcotte

Street Address

2010 Sharon St.

Area Code and Telephone Number

203-261-2857

City

Boca Raton

State

FL

Zip Code

33486

Email Address (optional)

jturcotte@pls.org

Fax (optional)

203-459-2911

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.

Section 18VAC60-25-210A3(II) Reinstatement or reactivation of a license
Acceptable Clinical Examinations Effective March 19, 2021
Definitions to Applied Terms

"Clinical Competency Exam" means a formal test of knowledge and competence in the evaluation, diagnosis, and treatment of dental conditions and the prevention of dental diseases which includes live patient and/or manikin based testing methods to demonstrate the skills needed to safely provide care and treatment of patients".

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.

Summary of Substance: Dental Hygiene Refresher Programs accepted by the American Dental Association and the American Academy of Dental Hygiene are evaluated according to their established standards and guidelines for didactic and clinical competency.

Rationale: The current regulation Section 18VAC60-25-210A3(III) does not include Dental Hygiene Programs recognized by the ADA and AADH for license reinstatement for experienced dental hygienists.

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is other legal authority for promulgation of a regulation, please provide that Code reference.

§ 54.1-2400

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

Signature:

Joyce Ann Turcotte

Date:

1/26/2022

Dental Hygienist Reinstatement Regulations

military service, or officially declared disasters. A written request with supporting documents must be submitted at least 30 days prior to the deadline for renewal.

F. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

G. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

H. In order to practice under remote supervision in accordance with subsection F of § 54.1-2722 of the Code of Virginia, a dental hygienist shall complete a continuing education course of no less than two hours in duration that is offered by an accredited dental education program or a sponsor listed in subsection C of this section and that includes the following course content:

1. Intent and definitions of remote supervision;
2. Review of dental hygiene scope of practice and delegation of services;
3. Administration of controlled substances;
4. Patient records, documentation, and risk management;
5. Remote supervision laws for dental hygienists and dentists;
6. Written practice protocols; and
7. Settings allowed for remote supervision.

18VAC60-25-200. Inactive license.

A. Any dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license.

B. With the exception of practice with a restricted volunteer license as provided in § 54.1-2726.1 of the Code, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dental hygiene in Virginia.

C. An inactive dental hygiene license may be renewed on or before March 31 of each year.

18VAC60-25-210. Reinstatement or reactivation of a license.

A. Reinstatement of an expired license.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application and the reinstatement fee.
2. An applicant for reinstatement shall submit evidence of completion of continuing education that meets the requirements of 18VAC60-25-190 and is equal to the requirement for the number of years in which his license has not been active in Virginia, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

3. An applicant for reinstatement shall also provide evidence of continuing competence that may also include (i) documentation of active practice in another state or in federal service, (ii) recent passage of a clinical competency examination accepted by the board, or (iii) completion of a refresher program offered by a CODA accredited program.

4. The executive director may reinstate a license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code and 18VAC60-25-120 to deny said reinstatement, and that the applicant has paid the reinstatement fee and any fines or assessments.

B. Reactivation of an inactive license.

1. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education that meets the requirements of 18VAC60-25-190 and is equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation.

2. An applicant for reactivation shall also provide evidence of continuing competence that may also include (i) documentation of active practice in another state or in federal service, (ii) recent passage of a clinical competency examination accepted by the board, or (iii) completion of a refresher program offered by a CODA accredited program.

3. The executive director may reactivate a license provided that the applicant can demonstrate continuing competence and that no grounds exist pursuant to § 54.1-2706 of the Code and 18VAC60-25-120 to deny said reactivation.

Dentist Reinstatement Regulations

4. A restricted volunteer license granted pursuant to this section shall expire on June 30 of the second year after its issuance or shall terminate when the supervising dentist withdraws his sponsorship.

5. A dentist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

F. Registration for voluntary practice by out-of-state licensees. Any dentist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five days prior to engaging in such practice;
2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license; and
3. Provide the name of the nonprofit organization, and the dates and location of the voluntary provision of services.

Part VI Licensure Renewal

18VAC60-21-240. License renewal and reinstatement.

A. The license or permit of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid, and his practice of dentistry shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2712.1 of the Code practicing in Virginia with an expired license or permit may subject the licensee to disciplinary action by the board.

B. Prior to 2022, every person holding an active or inactive license and those holding a permit to administer moderate sedation, deep sedation, or general anesthesia shall annually, on or before March 31, renew his license or permit. Beginning in January 2022, every person holding an active or inactive license and those holding a permit to administer moderate sedation, deep sedation, or general anesthesia shall annually renew his license or permit in his birth month in accordance with fees set forth 18VAC60-21-40.

C. Every person holding a faculty license, temporary resident's license, a restricted volunteer license, or a temporary permit shall, on or before June 30, request renewal of his license.

D. Any person who does not return the completed form and fee by the deadline required in subsection B of this section shall be required to pay an additional late fee.

E. The board shall renew a license or permit if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection B of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

F. Reinstatement procedures.

1. Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.
2. To evaluate continuing competence, the board shall consider (i) hours of continuing education that meet the requirements of subsection H of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.
3. The executive director may reinstate such expired license or permit provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

18VAC60-21-250. Requirements for continuing education.

A. A dentist shall complete a minimum of 15 hours of continuing education, which meets the requirements for content, sponsorship, and documentation set out in this section, for each annual renewal of licensure except for the first renewal following initial licensure and for any renewal of a restricted volunteer license.

1. All renewal applicants shall attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry and dental hygiene in Virginia.
2. A dentist shall maintain current training certification in basic cardiopulmonary resuscitation with hands-on airway training for health care providers or basic life support unless he is required by 18VAC60-21-290 or 18VAC60-21-300 to hold current certification in advanced life support with hands-on simulated airway and megacode training for health care providers.
3. A dentist who administers or monitors patients under general anesthesia, deep sedation, or moderate sedation shall complete four hours every two years of approved continuing education directly related to administration and monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.
4. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

Digital Scan Technician Regulation Discussion

**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 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 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 addressed a motion by the Exam Committee to adopt the guidance document on Dental Clinical Exam Requirements and the guidance document on Dental Hygiene Clinical Exam Requirements as proposed by the 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 agreed by consensus to support in concept the expanded pathway that VCU has requested in an effort to obtain faculty licensure.

- **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 stated that she has been seeing a lot of inconsistencies in the sanctions stated in Orders. Like issues should result 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.

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

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

Sept. 10, 2021
Date

Sandra K. Reen
Sandra K. Reen, Executive Director

September 10, 2021
Date

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Appliance"

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"Digital scan"

"Digital scan technician"

"Digital work order"

"License"

"Maxillofacial"

"Oral and maxillofacial surgeon"

"Teledentistry"

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons.

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or both structures.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be

restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, a dental assistant II, or a certified registered nurse anesthetist or the level of supervision that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services. For a digital scan technician, "direction" means the written or electronic instructions provided by a dentist to a digital scan technician in the form of a work order for a digital scan of a patient and the dentist's specified availability to consult with a digital scan technician while the scan is taken.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist, a dental assistant, or a certified registered nurse anesthetist who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, (iii) preparing the patient for dismissal following treatment, or (iv) administering topical local anesthetic, sedation, or anesthesia as authorized by law or regulation.

"Remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental

hygiene services are being provided. For the purpose of supervision of a digital scan technician, remote supervision means that a supervising dentist is accessible and available for communication and consultation in the practice of teledentistry.

D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Analgesia" means the diminution or elimination of pain.

"Continual" or "continually" means repeated regularly and frequently in a steady succession.

"Continuous" or "continuously" means prolonged without any interruption at any time.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensation of pain with minimal alteration of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes

the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness and includes "inhalation analgesia" when used in combination with any such sedating agent administered prior to or during a procedure.

"Moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VII (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Provide" means, in the context of regulations for moderate sedation or deep sedation/general anesthesia, to supply, give, or issue sedating medications. A dentist who does not hold the applicable permit cannot be a provider of moderate sedation or deep sedation/general anesthesia.

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-21-165. Delegation to digital scan technicians for use in teledentistry.

A. A dentist who delegates the taking of a digital scan by a digital scan technician shall ensure that the technician has a certificate of completion from a training program approved by the board that includes:

1. Training in prepping the patient, taking and evaluating the quality of a digital scan, safety protocols, and dental terminology given by a sponsor approved for continuing education as set forth in subsection C of 18VAC60-21-250; and

2. In-office training by the manufacturer on the proper operation of the digital scanner that includes orientation to the process and protocols for taking and evaluating digital scans for fabrication of a restoration or an appliance.

B. The dentist who directs a digital scan technician to take digital scans shall establish:

1. Written or electronic protocols for the practice of teledentistry in compliance with subsections B and C of § 54.1-2711 of the Code of Virginia;

2. Written or electronic protocols and procedures for the performance of digital scans by digital scan technicians in compliance with subsection B of §54.1-2708.5 of the Code of Virginia; and

3. A written or electronic work order for a digital scan that includes required components of a dental work order.

C. The dentist who directs a digital scan technician to take digital scans shall be:

1. Licensed by the board to practice dentistry in the Commonwealth;

2. Accessible and available for communication and consultation with the digital scan technician at all times during the patient interaction; and

3. Ultimately responsible for communicating 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 the Regulations Governing the Practice of Dentistry and the Code of Virginia and for documenting such communication in the patient record.

D. The directing dentist shall make available to the board any requested:

1. Protocols and procedures as specified in subsection B of this section;

2. Evidence that the digital scan technician has complied with the training requirements of subsection A of this section; and

3. Written or electronic work orders used in reliance on digital scans.

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