

APPROVED

**BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE**

Thursday, March 2, 2006

Department of Health Professions
6603 West Broad Street, 5th Floor
Richmond, Virginia 23230-1712
Conference Room 1

- CALL TO ORDER:** The meeting was called to order at 2:39 p.m.
- PRESIDING:** Edward P. Snyder, D.D.S., Chair
- MEMBERS PRESENT:** Jacqueline G. Pace, RDH
James D. Watkins, D.D.S.
Paul N. Zimmet , D.D.S.
- STAFF PRESENT:** Sandra Reen, Executive Director
Patricia L. Larimer, Deputy Executive Director
Elaine Yeatts, Senior Policy Analyst
LaFonda D. Parham, Administrative Assistant
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** The four members of the Committee were present.
- PUBLIC COMMENT:** None.
- MINUTES:** On a properly seconded motion by Dr. Watkins, the Committee approved the minutes of the Regulatory/Legislative Committee meeting held December 7, 2005.
- REQUEST RESPONSE ON NITROUS OXIDE:** Ms. Reen summarized the letter from Mr. McNichols which requests that a positive solution be found to have nitrous oxide administered by a dentist or their current staff. He asks the Board to permit patients to sign legal waivers that they understand the risk of the administration of nitrous oxide. She reviewed the provisions for administration of anxiolysis or inhalation analgesia in regulation 18VAC 60-20-108 which went into effect on June 29, 2005.
- The Committee discussed the requirement for a 2 person treatment team and the requirement that the dentist be one of the members of the team. Ms. Yeatts noted that legislation allowing dental hygienists to administer nitrous oxide and local anesthesia will go into effect in July so the Board could amend this rule to allow either a dentist or

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dental hygienist to administer and treat the patient. It was agreed that requiring a 2 person team was a reasonable requirement to protect the public and that amendment of the regulation to address the legislation for dental hygienists would be considered following enactment of the statute.

Dr. Snyder indicated that he would report that the Committee recommends that the Board take no action in response to Mr. McNichols's letter.

**USE OF "CERTIFIED" IN
ADVERTISING:**

Dr. Snyder summarized the letter from Dr. Supan dated October 26, 2005 as requesting that the Board take steps to assure that the word "certified" is used appropriately in advertising. Dr. Supan believes that the public deserves truth in advertising when it comes to evaluating the credentials, education and expertise of a dentist.

Mr. Casway advised that so long as the information about being certified is truthful, the Board cannot restrict its use.

Ms. Reen explained that the staff is receiving calls about advertising it cannot answer and noted that the 3 letters on this subject on the agenda are typical of the questions being asked where staff needs guidance. She explained that either the rules should be updated or a guidance document be issued to assist licensees in understanding the rules.

NAMING PRACTICE:

Dr. Snyder summarized the letter from Dr. Martin dated February 17, 2006 as asking if the practice name "Richmond Smile Center" is permissible.

Mr. Casway recommended deferring this matter to be discussed during a closed session to confer with legal counsel on litigation pertaining to advertising which will be held during the Board meeting on March 3, 2006. Dr. Snyder agreed and deferred discussion.

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CLAIMS OF SUPERIORITY: Dr. Snyder reviewed the letter from Dr. Callahan, dated January 22, 2006 which asks for guidance on what constitutes claims of superiority and which includes examples of advertisements stating recognition he and his wife have received. Dr. Snyder deferred discussion of this matter to the closed session to confer with legal counsel on litigation pertaining to advertising which will be held during the Board meeting on March 3, 2006.

The Committee agreed that a guidance document for advertising should be developed. Dr. Watkins suggested that two members of the committee prepare a draft to present at the next committee meeting. Dr. Watkins and Dr. Snyder agreed to develop the draft.

REPORT ADVERSE REACTIONS:

Ms. Reen reported that in a recent case, the meaning of the term "morbidity" was questioned in regard to the application of regulation 18 VAC 60-20-140 which requires reporting on adverse reactions. She reviewed the definitions of the term given in the Dorland's Medical Dictionary, Mosby's Dental Dictionary, Webster's Dictionary and Black Law Dictionary. She also provided definitions of the term "injury" in response to the discussions of the Special Conference Committee which heard the case.

It was agreed that the interpretation given by the Board should not be based on an emergency that was resolved by the dentist or by emergency assistance. Ms. Yeatts advised that the standard used by the Board of Medicine is that reporting is required if a patient has to be transported to a hospital for a stay of more than 24 hours. The Committee agreed that the treating dentist has a duty to follow-up on patients that were transported from his office. Dr. Watkins moved that the Committee recommend that the Board issue a guidance document which interprets the term morbidity consistent with the regulatory terminology used by the Board of Medicine. The motion passed.

REGULATORY ACTION ON EXPANDED DUTIES FOR

Ms. Reen explained that at its December 9, 2005 meeting, the Board referred this action back to the Committee for

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DENTAL ASSISTANTS:

further consideration following adoption of the motion to pursue legislation on establishing two levels of dental assistants. She noted that the American Dental Assistants Association and the Dental Assisting National Board have developed a model of 4 levels of assistants. She also noted that information on dental assisting education programs was provided and that the information from Iowa includes programs for expanded duties.

Dr. Watkins stated that the opposition to including supragingival scaling as a delegable duty should not prevent the Board from moving forward with regulatory changes to allow dental assistants to perform the duties that no one opposed.

Ms. Reen reported that the decision is whether to pursue both legislation and regulations or just legislation which will then require regulatory action. She said that the regulatory process could be overtaken by the legislative process if the legislation includes an emergency enactment clause.

Dr. Zimmet moved to use the legislative track to address expanded duties. The motion passed.

**DEVELOPMENT OF
LEGISLATION FOR DENTAL
ASSISTANTS:**

Dr. Snyder asked how the Committee would like to proceed with developing a legislative proposal. Ms. Yeatts advised that representatives of the interested organizations be asked to assist in developing the proposal. It was agreed that Ms. Reen would contact the following organizations to invite their participation on an ad hoc committee:

- Virginia Dental Association
- Virginia Dental Hygiene Association
- Virginia Dental Assistants Association
- Commonwealth Dental Hygiene Association, and
- J. Sargeant Reynolds's Community College Dental Assisting Program.

Dr. Yeatts advised that the proposal would need to be adopted by the Board at its June 9, 2006 meeting in order to be submitted to the Governor in time for consideration for

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the 2007 Session of the General Assembly.

Dr. Snyder designated Dr. Watkins, Ms. Pace and himself to serve on the committee and designated Dr. Watkins to serve as the chair.

Ms. Reen noted that two meetings should be set, one for the advisory group and one for the committee. The following dates were agreed to:

- April 7, 2006 at 9:00 a.m. for the ad hoc committee, and
- May 5, 2006 at 9:00 a.m. for the Regulatory/Legislative Committee.

ADJOURNMENT:

With all business concluded, the Committee adjourned at 4:26 p.m.

Edward P. Snyder, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date