

**VIRGINIA BOARD OF DENTISTRY  
MINUTES  
March 13, 2015**

**TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:01 a.m. on March 13, 2015, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, Virginia 23233.

**PRESIDING:** Melanie C. Swain, R.D.H., President

**BOARD MEMBERS  
PRESENT:**

John M. Alexander, D.D.S  
Sharon W. Barnes, Citizen Member  
Surya P. Dhakar, D.D.S.  
Charles E. Gaskins, III, D.D.S.  
A. Rizkalla, D.D.S.  
Evelyn M. Rolon, D.M.D.  
Tammy K. Swecker, R.D.H.  
James D. Watkins, D.D.S.  
Bruce S. Wyman, D.M.D.

**STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board  
Elaine J. Yeatts, DHP Senior Policy Analyst  
Kelley Palmatier, Deputy Executive Director for the Board  
Huong Vu, Operations Manager for the Board

**OTHERS PRESENT:** David E. Brown, D.C., DHP Director  
James E. Rutkowski, Assistant Attorney General

**ESTABLISHMENT OF  
A QUORUM:**

All members of the Board were present.

Ms. Reen read the emergency evacuation procedures.

Ms. Swain gave greetings then explained the parameters for public comment and opened the public comment period.

**PUBLIC COMMENT:**

**John Bitting** of DOCS Education stated that DOCS has provided sedation education for 15 years and has trained over 20,000 dentists. He expressed concern for sedation permit applicants, indicating a clerical error by DOCS was immediately corrected and should not prevent issuance of permits. Mr. Bitting was advised he could not address an investigation. He said DOCS sedation courses meet and exceed Virginia's requirements and the American Dental Association's (ADA) guidelines. He asked Board

members to attend A DOCS course at no charge or to send an investigator.

**Dr. Alan Bream** said he has practiced since 1973 and took a DOCS sedation course in 2006. He added that he safely treated patients with the DOCS protocol. He noted that he took a DOCS course again in May 2014 to qualify for a sedation permit and as of today he has not been issued one. Mr. Bream was advised he could not address an investigation. He reported his frustration with how long it is taking to get a permit.

**Dr. Michael Link, VDA President**, addressed the topic of mid-level providers, expressing concerns about comparisons made nationally to other professions and the training needed to perform irreversible procedures. He advised that any dental hygiene workforce changes would be costly and would require a significant expansion in the number of hygienists. He said the ADA and the VDA believe the Community Dental Health Coordinator (CDHC) model which is a cost-effective approach to improving access to care. CDHCs focus on education, prevention, and patient navigation in the communities where patients reside to connect people to the dental safety net, as well as to dentists for needed treatment. He added that the CDHC model is currently active in eight states and said the VDA is moving forward with the program and offered to give a presentation on the CDHC at a future Board meeting.

**APPROVAL OF  
MINUTES:**

Ms. Swain asked if there are any corrections to the minutes as listed on the agenda. Dr. Watkins moved to adopt the minutes in total as presented in the agenda package. The motion was seconded and passed.

**DHP DIRECTOR'S  
REPORT:**

Dr. Brown –

- Thanked the Board for notifying dentists that they are required to either report dispensing of controlled substances to the Prescription Monitoring Program (PMP) or request a waiver for reporting.
- Noted that legislation passed to require all prescribers to register with PMP.
- Reported that criminal background checks will be required for RNs and LPNs beginning in 2016. He said Nursing is the first board in DHP to include this requirement for licensure, noting that the Nurse Licensure Compact requires this information.

- An external audit of the Health Practitioners Monitoring Program by the Citizen Advocacy Center is underway to evaluate the structure and functioning of the program.

He also thanked board members for meeting with him to share their perspectives on the work of the Board and the Department.

**DHP BUDGET  
MANAGEMENT:**

Mr. Giles, Budget Manager, gave an overview of the internal and external processes followed to develop and manage the budget. He explained that the DHP Director oversees the process and determines how resources are used. He said, in the internal process, cost center managers determine if their current budget resources are adequate then submit an analysis of their department's needs using the base budget and the previous fiscal year spending for a select group of accounts. The external phrase of the budget process is initiated by the DHP Director when proposed changes require approval of the Office of Secretary of Health and Human Resources and review by the Department of Planning and Budget for inclusion in the Governor's budget. Mr. Giles noted that DHP is a non-general fund agency and its revenue is generated by issuing licenses with 83% of the revenue budgeted based on the number of renewals forecasted for a given fiscal year. The remaining 17% of revenue is based on historical data. He added that the Board will soon receive a letter from Dr. Brown about the analysis of the Board's current revenues and expenditures and the possible need to adjust fees.

**LIAISON/COMMITTEE  
REPORTS:**

**Board of Health Professions (BHP).** Dr. Watkins noted that the public hearing on BHP's Dental Hygienist Scope of Practice Review was held on January 22, 2015 and the comments submitted by the Board are provided in the agenda materials. He added that due to inclement weather, BHP's February 17, 2015 meetings were cancelled and rescheduled for April 9, 2015. He also noted that the letter conveying the Board's resolution requesting coordination among the health regulatory boards for investigation of electronic health records would be discussed on April 9<sup>th</sup>.

**AADB.** Ms. Swain noted that she, Dr. Gaskins, and Ms. Palmatier will attend the Mid-Year meeting in April, 2015 in Chicago.

**ADEX.** Dr. Rolon stated that the Highlights of the ADEX meeting in November 2014 are provided which includes information on the changes to the Dental and Dental Hygiene examinations. Dr. Rizkalla reported that ADEX has hired Dr. Guy Champagne as its Chief Executive Officer and Patrick Braatz as its Chief Operating

**Officer.** He added that NERB changed its name to the Commission on Dental Competency Assessments (CDCA).

**SRTA.** Ms. Swecker reported that SRTA will not administer the ADEX Dental Hygiene Exam in 2015 as planned because of confusion over which states will accept it. She said that the SRTA Dental Hygiene Exam will be administered and is accepted in 32 states. Dr. Watkins noted that there is no change to SRTA administering the ADEX Dental Exam in 2015.

**SCDDE.** Dr. Gaskins stated that he, Dr. Alexander and Ms. Reen attended the meeting in January 2015 which included dental professionals from dental schools, boards of dentistry, dental agencies and associations. He then highlighted the discussion of:

- The development and application of the "standard of care."
- Turning risk management into risk avoidance.
- The validity for simulated clinical testing compared to the validity for the use of human subjects in testing.
- The validity for "portfolios" and potential uses for portfolios in education, testing, licensure, and re-certification.
- The relationship of standards of care to risk management, risk avoidance, education, testing, licensure, law enforcement, malpractice claims, and the ethical practice of dentistry.

**Examination Committee.** Ms. Swecker presented the Committee's recommendations for requiring passage of the law exam for licensure and once every three years for all licensees. She noted that the exam would be open book and three hours of continuing education credit would be granted for passage. Ms. Swecker moved that the Board issue a Notice of Intended Regulatory Action to require passage of a law exam. The motion was seconded and passed.

## **LEGISLATION AND REGULATIONS:**

**Status Report on Regulatory Actions.** Ms. Yeatts reported that the Periodic Review to reorganize Chapter 20 into four new chapters has been at the Governor's office for more than 78 days. She added that she does not expect action until after April due to the 2015 General Assembly session.

**Report of the 2015 General Assembly.** Ms. Yeatts reported that DHP followed 88 bills, none of which directly affected Dentistry. She stated that HB1963 extends the ability of DHP to share information about a suspected violation of state or federal law or regulation with other agencies within the Health and Human Resources Secretariat

or federal law-enforcement agencies such as DEA or FBI. Ms. Yeatts was asked if she knew why the Board's proposal on fee splitting was not forwarded to the General Assembly. Ms. Yeatts said she did not know.

## **BOARD**

**DISCUSSION/ACTION:** **Review of Public Comment Topics.** No discussion occurred.

**Infection Control.** Dr. Rizkalla requested discussion of amending the Regulations Governing Dental Practice to address infection control. After review of the provisions and information currently in place to address infection control issues, Dr. Rizkalla moved to amend GD 60-15 by adding another bullet point after the sixth bullet as follow: "*Follow the applicable CDC infection control guidelines and recommendations.*" The motion was seconded and passed.

**CODA's Proposed Standards.** There was general discussion about the standards applying to all programs in the country; the dental hygiene program being very condensed; and accredited programs being allowed to teach delegable duties which differ from state to state. It was also noted that CODA does not accredit DA II and CDCH programs.

**Practice Ownership.** In response to a question, Ms. Reen reported that she and Ms. Twombly of Enforcement met with the dental oversight staff at DMAS in February. The result was receiving a contact person who could provide employer and practice location information to assist with DHP investigations. She added that a beneficial relationship has been established.

## **BOARD COUNSEL REPORT:**

Mr. Rutkowski reported:

- Dr. Broadway's appeal of his Board Order to Circuit Court was dismissed because he failed to file on time.
- The formal hearing for an applicant scheduled for today was continued because the applicant's lawyer was disbarred and the applicant needs to obtain new counsel.
- Board members must not reply to all when responding to Board staff e-mails because doing so could constitute a meeting.
- Social gatherings of more than two Board members are discouraged because they would have the appearance of a meeting of a public body.
- The Supreme Court ruled that the North Carolina Board of Dentistry was not entitled to sovereign immunity from FTC oversight of anti-trust activities because:

- NC's Dental Practice Act does not specify that teeth whitening is "the practice of dentistry."
- Most Board members, six dentists and one dental hygienist, are active market participants and are not actively supervised by the State.
- The Board did unreasonably restrain trade in violation of antitrust law.

Mr. Rutkowski added that a task force within the Attorney General's Office is reviewing the decision and which may lead to future policy development regarding boards which regulate professional practice.

**REPORT ON CASE  
ACTIVITY:**

Ms. Palmatier reported the number of cases received and closed in calendar year 2014 and from January 1, 2015 through February 24, 2015. She then reported on the key performance goals for the second quarter of fiscal year 2015, noting that 71 patient care cases were received and 91 cases were closed achieving a 128% clearance rate; the pending caseload older than 250 days was 23%; and 84% of cases were closed within 250 days. She added that no licenses were suspended between December 1, 2014 and February 25, 2015. She thanked Board members for reviewing cases yesterday which should result in improved performance statistics. She addressed the Board's trend in not adding relevant findings of fact to Board Orders to support the sanctions imposed and provided samples of Orders from Board of Medicine and Board of Nursing for review and discussion. Mr. Rutkowski advised that it is a good practice to note any mitigating or aggravating facts that led to the decision made. Dr. Watkins asked if editing the Sanction Reference Point worksheets would help achieve consistency. Ms. Reen said yes and Ms. Swain assigned this matter to an ad-hoc committee of the three chairs of the Special Conference Committees.

**EXECUTIVE  
DIRECTOR'S  
REPORT/BUSINESS:**

**Comments on ADA Sedation & Anesthesia Guidelines.** Ms. Reen stated that a copy of the Board's comments is provided for information only and no action is needed. She added that no response has been received.

**Travel Reimbursement.** Ms. Reen noted that DHP is updating the current travel policy to allow for exempt agencies to directly reimburse DHP travelers for travel expenses. She said Board staff is working with the Finance division to determine if the policy allows board members who examine to be reimbursed directly by SRTA.

She explained that SRTA reimburses a fixed rate for subsistence to cover food and lodging and a fixed rate of remuneration for days worked for examinations and meetings. Ms. Reen added that the

SRTA reimbursement policies are under review by the State Comptroller and she hoped to have more information at the next meeting.

**Planning Open Forums.** Ms. Reen noted that the Board has registered six Dental Assistants II (DAII).

She stated that the Board will hold two open forums, the first on May 8, 2015. She noted that the date of the second forum on teledentistry hasn't been set but preliminary plans are to hold it in August. She said the May 8<sup>th</sup> forum will address the training and qualification requirements for DAII registration; creating a pathway for dental hygienists to do reversible procedures; and expanding options for dental hygienists to practice under remote supervision. She asked if the Board had any additional information or questions it would like included in the invitation. It was agreed by consensus to include community health centers, free clinics, and the VA Health Care Coalition on the distribution list. It was also agreed by consensus to add questions about what are the needs, options, costs and outcomes to be considered.

**ADJOURNMENT:**

With all business concluded, the meeting was adjourned at 11:27 a.m.



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



Sandra K. Reen, Executive Director

6/12/15

Date

June 12, 2015

Date