

**VIRGINIA BOARD OF DENTISTRY
MINUTES
June 12, 2015**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:00 a.m. on June 12, 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.
A. Rizkalla, D.D.S.
Evelyn M. Rolon, D.M.D.
Tammy K. Swecker, R.D.H.
James D. Watkins, D.D.S.

BOARD MEMBERS ABSENT: Charles E. Gaskins, III, 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: With eight members of the Board present, a quorum was established.

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: **Dr. Michael Link, VDA President**, stated that the VDA Board of Directors voted unanimously to oppose the NOIRA for requiring passage of a law exam indicating that it was viewed as a punitive measure. He recommended more communication from the Board

to licensees and commented that the sedation inspection guidelines do not protect the public.

**APPROVAL OF
MINUTES:**

Ms. Swain asked if there are any corrections to the minutes as listed on the agenda. No corrections were offered and the minutes were adopted as present.

**DHP DIRECTOR'S
REPORT:**

Dr. Brown --

- Noted that the Task Force on Prescription Drug and Heroin Abuse continues to meet and develop recommendations to reduce deaths that result from drug abuse.
- Stated that in July the Prescription Monitoring Program (PMP) will begin phasing in the registration of pharmacists and prescribers of Schedule II, III and IV controlled substances.
- Encouraged participation in the Board Development Day on September 28, 2015.
- Reported that he is proposing legislation to change the composition of boards in DHP and wants to propose having an additional citizen member on the Board of Dentistry. He asked if the Board would want to replace a dentist to keep the membership at ten or add an eleventh slot for a new citizen member. By consensus, the Board supported adding an eleventh slot for another citizen member.

**LIAISON/COMMITTEE
REPORTS:**

Board of Health Professions (BHP). Dr. Watkins stated that the BHP meeting minutes are provided and he is available to answer any questions. Ms. Reen noted that the BHP discussed the Board of Dentistry's request for consideration of investigating the veracity of electronic records. She added that a summer intern is researching this topic and will present his findings at the BHP's August 6, 2015 meeting.

AADB. Ms. Swain stated that she, Dr. Gaskins and Ms. Palmatier attended the AADB Mid-Year meeting in April 2015. She added that her report is included in the agenda and noted that the substance abuse discussion was an eye opener.

Ms. Palmatier noted that her report is also included in the agenda and added that the NC Board indicates that it will not change its processes very much as a result of the Supreme Court decision issued in their case with the Federal Trade Commission.

ADEX. Drs. Rolon and Rizkalla said there was nothing new to report.

SRTA. Dr. Watkins stated that issues with the acceptance of the ADEX exam will be addressed at SRTA's annual meeting in August 2015. Ms. Swecker reported that SRTA did not administer the ADEX Dental Hygiene Exam in 2015. Ms. Swain noted that Dr. Watkins, Ms. Swecker and Dr. Rizkalla plan to attend the annual meeting.

CTel Executive Telehealth Summit 2015. Ms. Barnes thanked the Board for the opportunity to attend. She then noted the following topics were discussed:

- In Idaho's rural areas telemedicine is saving money and providing better care.
- Establishing a physician-patient relationship through an examination by tablet, phone app, or web camera.
- Doctors in one state treating patient in another state.
- Whether dentistry is ready for teledentistry.

Ad Hoc Committee on Disciplinary Findings. Dr. Watkins said the committee is recommending some amendments to the Sanction Reference Points guidance document and asked Ms. Reen to address her follow-up on the recommendations. Ms. Reen reported that she has talked to Mr. Kauder of Visual Research to determine if adding another 20 point offence score for "financial or other material gain" will affect the delineation of the offense scoring ranges. She added that Mr. Kauder has agreed to evaluate the effect and that she hoped to have the findings for the Board's September meeting.

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 170 days and that the NOIRA for a law exam is pending approval by the Governor to publish.

Response to Petition for Rulemaking from Dr. Sood. Ms. Yeatts stated that the petition requests acceptance of the dental programs accredited by Commission on Dental Accreditation of Canada (CDAC) since there is an existing reciprocal agreement between CDAC and Commission on Dental Accreditation of American Dental Association (CODA) to bilaterally recognize programs that are accredited by either of these commissions. She noted that the Board may accept the petitioner's request for amendments to regulations

and initiate rulemaking by adoption of a NOIRA or the Board may reject it and state its reasons for denying the petition. She said the regulations that would need to be amended are 18VAC60-20-60 and 18VAC60-20-71. Dr. Watkins moved to accept dental programs accredited by CDAC. The motion was second and passed. Dr. Watkins moved to initiate rulemaking by fast-track action. The motion was seconded and passed.

Mr. Rutkowski agreed to advise Ms. Reen if dental programs accredited by CDAC can be deemed equivalent to programs accredited by CODA now or if it is necessary to wait for the regulatory language to be changed.

BOARD

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

Written comments from Ms. Quitter and from Dr. Mayberry. Ms. Reen noted that the issue addressed in these comments is restricting the placement of implants to oral surgeons. Dr. Alexander commented that restricting implant placement to only Oral Surgeons is not ideal since there are others who are qualified to do so. He added that he agreed with Dr. Mayberry about taking a weekend course is not sufficient training. Discussions followed about having Ms. Quitter submit a complaint; interest in knowing if other boards have regulatory restrictions; and, the high rate of failure on implants performed by general dentists in disciplinary cases. It was agreed to accept these comments as information and to have staff acknowledge the comments and recommend that Ms. Quitter file a complaint.

Requiring Capnography for Sedation and General Anesthesia. Ms. Reen stated that Dr. Alexander is requesting discussion of amending the current regulations (18VAC60-20-110 and 120) to add capnography to the requirements for administering sedation. She added that the Board's options are to pursue this matter as fast-track, to assign this matter to the Regulatory-Legislative Committee, or to authorize the regulatory process. She then turned the discussion over to Dr. Alexander who stated that it is a patient safety and standard of care issue. He then read the definition of capnography as a method by which the exhaled CO₂ can be measured. He added that this method indicates the oxygen level sooner than pulse oximeter. He then moved to amend the regulations to include capnography by fast-track action. The motion was seconded and passed.

Proposed Legislation on Fee Splitting. Ms. Reen stated that Dr. Gaskins is requesting that the fee splitting legislative proposal that

was not approved by the Governor for the 2015 General Assembly be advanced again. Ms. Yeatts noted that when the proposed legislation was last presented, comments received were mixed and it was not widely supported by dentists. She added that legislation must meet the Governor's criteria as being essential for public safety or agency efficiency. Dr. Rizkalla moved to resubmit the proposed legislation. The motion was seconded and passed.

Comments Requested: ADA Sedation and Anesthesia Guidelines. Ms. Reen stated that at its December 2014 meeting, the Board authorized the submission of comments on these guidelines and initial comments were submitted in January 2015. She said the ADA has opened another comment period on the guidelines which closes on June 29, 2015 and added that the drafts circulated for comment include changes in the provisions for children age twelve and under and the requirements for moderate sedation competency courses which the Board had addressed in its comments. She advised that the Board might submit additional comments or take no action. Discussion followed about the meaning of the word "managed" as used in the teaching guidelines for a moderate sedation course and the importance of insuring that the students have direct clinical experience. Ms. Reen indicated that the Board could develop its own education requirements instead of using the ADA's Guidelines or it could issue guidance on its interpretation of the ADA's guidelines. Dr. Alexander suggested that the Board submit comments on the clinical component then, once the final guidelines are in place, the Board can issue its own guidance. By consensus, the Board agreed to submit comments and authorized Ms. Swain to review and approve the comments which will be drafted by Dr. Alexander, Dr. Rizkalla and Board staff.

Policy Strategies to Increase Access to Dental Treatment. Ms. Reen stated that the minutes and transcript of the Open Forum on Policy Strategies to Increase access to Dental Treatment are included in the agenda for discussion of the next steps to be taken. She added that written comments received after the forum and applicable laws and regulations are also included to facilitate the discussion. She said there was considerable support for expanding the options for dental hygienists to practice under remote supervision of dentists and support for adjusting the education and endorsement requirements for DA II registration. Dr. Brown commented that the Open Forum was successful and showed there was a need to address access to dental care. He noted that patient harm was not raised as an issue in expanding the options for dental hygienists to practice under remote supervision. Discussion followed about expanding remote supervision to free clinics and settings serving children and the elderly. The Regulatory-

Legislative Committee was asked to work on a proposal to expand the use of remote supervision for these populations and to review the education requirements for dental assistants II.

Nominating Committee. Ms. Swain reviewed the provisions of the Standard Code of Parliamentary Procedures for nominating committees. She asked anyone interested in serving as an officer to let Ms. Reen know by July 15, 2015. She explained that she will appoint members who are not interested in serving as officers to the nominating committee which will meet prior to the September board meeting.

**BOARD COUNSEL
REPORT:**

Mr. Rutkowski said he recently advised DHP that Board members serving as examiners can be directly reimbursed by SRTA for travel expenses then explained they cannot receive SRTA's per diem/honorarium for serving as an examiner. In addition, he explained that board members should never do research in relation to a disciplinary proceeding and should rely on the information in the case record to make decisions.

**REPORT ON CASE
ACTIVITY:**

Ms. Palmatier reported that from January 1, 2015 through June 11, 2015 332 cases were received; 399 cases were closed with no violation; and 61 cases were closed with violations. She noted that 61 patient care cases were received and 64 cases were closed achieving a 105% clearance rate for the third quarter; the pending caseload older than 250 days was 33%; and 75% of cases were closed within 250 days. She added that the license of one dentist and one hygienist had recently been mandatorily suspended. She also reported that 116 sedation permit inspections had been completed since November 2014. Ms. Palmatier said Drug Control Act and recordkeeping violations are recurring findings and that approximately 73% of the case decisions have resulted in advisory letters.

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

Registration of dentists to dispense drugs. Ms. Reen reported that 4067 of the 6600 dentists with active licenses have completed the waiver form and she is working with PMP staff to advise the remaining dentists that they must submit a waiver or register to report dispensing. Anyone who does not respond will be reported to the Board for consideration of disciplinary action.

Wage position. Ms. Reen reported that a part time position has been approved to hire a dentist to assist in case reviews.

2016 Proposed Calendar. Ms. Reen stated that the 2016 proposed calendar is presented for adoption by the Board. She said the Committee Meeting days are reserved for Regulatory-Legislative or Examination Committee meetings. The Board agreed by consensus to change a committee meeting date from August 5, 2016 to August 12, 2016. Dr. Watkins moved to adopt the 2016 calendar as amended. The motion was seconded and passed.

Revenues, Expenditures & Cash Balance Analysis. Ms. Reen said as a result of the analysis the Board, at its September meeting, will need to act on a one-time renewal fee decrease, stating that DHP's budget manager will present his recommendations for the decrease in September. Ms. Yeatts added that the one-time reduction will be done as an exempt action and will be published for 30 days and be in effect for the 2016 renewal notices.

Auditing Continuing Education (CE). Ms. Reen asked the Board to consider if and how it would like to address licensees' compliance with the CE requirements. She explained the Board's practice has been to have respondents appearing for an informal conference bring their CE documentation for the previous three renewal years for review by the Board. She added that the Board is now piloting standardized forms for the letters, notices, and orders that are prepared by the Administrative Proceeding Division of DHP and she has been notified that the request for CE documents could no longer be addressed in its notices for informal conferences because the request is not germane to the subject complaint or proceeding and could be addressed in another manner. Ms. Reen suggested that the Board suspend auditing until Board staff can research how other boards within DHP and other boards of dentistry are conducting audits. Ms. Reen agreed to provide information at the December 2015 meeting.

Open Forum on Policy Strategies to Address Teledentistry. Ms. Reen stated that the draft announcement and attachments are presented for consideration. She noted that currently there are no strategies listed in this draft such as were included in the access forum announcement. She asked the Board if it wishes to proceed with the forum. Dr. Watkins moved to accept the draft as presented and to proceed with the forum. The motion was seconded passed.

SPECIAL SESSION:

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

MEMBERS PRESENT: John M. Alexander, D.D.S.
Sharon W. Barnes
Surya P. Dhakar, D.D.S.
Al Rizkalla, D.D.S.
Evelyn M. Rolon, D.M.D.
Tammy K. Swecker, R.D.H.
James D. Watkins, D.D.S.

MEMBERS ABSENT: Charles E. Gaskins, III, D.D.S.
Bruce S. Wyman, D.M.D.

QUORUM: With eight members present, a quorum was established.

STAFF PRESENT: Sandra K. Reen, Executive Director
Kelley Palmatier, Deputy Executive Director
Huong Vu, Operations Manager
Emily Tatum, Adjudication Specialist

OTHERS PRESENT: James E. Rutkowski, Assistant Attorney General, Board Counsel
Corie E. Tillman Wolf, Assistant Attorney General

**Len Futerman, DDS
Case No.: 162249** The Board received information from Ms. Wolf in order to determine if Dr. Futerman's impairment from substance abuse constitutes a substantial danger to public health and safety. Ms. Wolf reviewed the case and responded to questions.

Closed Meeting: Dr. Watkins 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 Len Futerman, DDS. Additionally, Dr. Watkins moved that Ms. Reen, Ms. Palmatier, Ms. Vu 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. The motion was seconded and passed.

Reconvene: Dr. Watkins 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. Watkins moved that the Board summarily suspend Dr. Futerman's license; schedule him for a formal hearing; and also offer a consent order for indefinite suspension of his license to practice dentistry in the Commonwealth of Virginia, stayed upon Dr. Futerman's compliance with all terms and conditions of his Recovery Monitoring Contract with the Health Practitioners' Monitoring Program. Following a second, a roll call vote was taken. The motion passed unanimously.


CLOSED SESSION:

Case # 152378: Dr. Watkins 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 consider a Consent Order for the resolution of a disciplinary matter. Additionally, Dr. Watkins moved that Ms. Reen, Ms. Palmatier, Ms. Vu 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. The motion was seconded and passed.

Reconvene: Dr. Watkins 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. Watkins moved that the Board accepts the Consent Order as presented. Following a second, a roll call vote was taken. The motion passed unanimously.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:16 p.m.




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



Sandra K. Reen, Executive Director



Date



Date