Approved

VIRGINIA BOARD OF DENTISTRY
REGULATORY-LEGISLATIVE COMMITTEE MEETING MINUTES
April 23, 2021

TIME AND PLACE: The virtual meeting of the Regulatory-Legislative Committee was called to order at 1:00 p.m., on April 23, 2021.

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

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

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

COMMITTEE MEMBERS PRESENT VIRTUALLY:
Sandra J. Catchings, D.D.S., Chair
Patricia B. Bonwell, R.D.H., PhD
Sultan Chaudhry, D.D.S.
J. Michael Martinez de Andino, J.D.

OTHER PARTICIPATING BOARD MEMBERS PRESENT VIRTUALLY:
Margaret F. Lemaster, R.D.H.

STAFF PRESENT VIRTUALLY:
Sandra K. Reen, Executive Director, Board of Dentistry
Donna M. Lee, Discipline Case Manager, Board of Dentistry
Barbara Allison-Bryan, M.D., Chief 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 VIRTUALLY:
James E. Rutkowski, Assistant Attorney General

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

PUBLIC COMMENT: Dr. Catchings explained the parameters for public comment and opened the public comment period. Dr. Catchings also stated that written comment was received from Alexander T. Vaughan, D.D.S., which was sent by email to Committee members and will be posted with the draft minutes.

Alexander T. Vaughan, D.D.S., Dental Director, Virginia Total Sleep – Dr. Vaughan provided an overview regarding the two main modalities of sleep testing; a polysomnogram and the home sleep apnea test. He reiterated that the American Academy of Dental Sleep Medicine position

paper states that ordering a home sleep apnea test is within the scope of dentistry and that only a sleep physician can render the diagnosis. Dr. Vaughan stated that he could not find a published opinion of the Board regarding whether home sleep apnea testing is within the scope of dentistry and suggested that an advisory panel be formed so that information could be provided from both sides to address the regulatory issue.

Gianna Nawrocki, American Association of Orthodontists (AAO) – Ms. Nawrocki provided comment on the proposed regulations for the digital scan technicians. She stated that in letter "A" of the draft regulations, AAO and VAO are listed as one of the sponsors that have an approved program available for digital scan technicians. Ms. Nawrocki informed the Committee that at this time and in the foreseeable future, the AAO and VAO do not have the intent nor resources to create a program, and including it in the regulations would be misleading to individuals in Virginia that want to become a digital scan technician. She requested that the regulation be revised.

Ms. Nawrocki further specified that In Section "C" of the draft regulations where it lists the requirements, the AAO would like to propose a requirement that the "supervising dentist shall be available to inspect and verify the appliance or aligner prior to the beginning of treatment." She indicated this is to make sure that the aligner fits perfectly and the scan was taken correctly and the dentist is responsible for the beginning of that treatment.

APPROVAL OF MINUTES:

Dr. Catchings asked if there were any edits or corrections to the October 23, 2020 minutes. Dr. Bonwell moved to approve the minutes as presented. Following a second, a roll call vote was taken. The motion passed.

COMMITTEE DISCUSSION/ACTION:

Regulatory Actions Chart. Ms. Yeatts stated that there were no changes to the chart distributed to the Committee. The following proposed regulations are currently at the Governor's Office:

- amendment to restriction on advertising dental specialties;
- waiver for e-prescribing; and
- technical correction to fees.

Protocols for remote supervision of VDH and DBHDS dental hygienists will be final on April 26, 2021 and will be effective May 25, 2021.

The administration of sedation and anesthesia regulations went into effect on March 17, 2021.

The education and training for dental assistants II regulations went into effect on March 31, 2021.

The training and supervision of digital scan technicians and the training in infection control are NOIRAs and the comment period ended on March 31, 2021.

Consideration of Revisions to Guidance Documents.

- **Guidance Document 60-5:** Auditing Continuing Education – Ms. Yeatts reviewed the proposed changes with the Committee. The Committee amended the guidance document to add that acknowledgement of completion of the continuing education audit should be sent to licensees.
- **Guidance Document 60-10:** Failure to Comply with Advertising Guidelines – Ms. Yeatts reviewed the proposed changes with the Committee.
- **Guidance Document 60-18:** Approved Template for Dental Appliance Work Order Forms - Ms. Reen explained the proposed changes to the Committee.
- **Guidance Document 60-19:** Approved Template for Dental Appliance Subcontractor – Ms. Reen reviewed proposed changes with the Committee.
- **Guidance Document 60-22:** Failure to comply with Insurance and Billing Practices – Ms. Yeatts reviewed the proposed changes with the Committee.

Dr. Chaudhry moved that the Committee recommend to the Board adoption of revised Guidance Document 60-5 as amended; Guidance Document 60-10; Guidance Document 60-18; Guidance Document 60-19; and Guidance Document 60-22. Following a second, a roll call vote was taken. The motion passed.

TRAINING IN INFECTION CONTROL – DENTAL ASSISTANTS:

Ms. Yeatts informed the Committee that there were comments submitted from different organizations, some in favor of the training in infection control for dental assistants and some in opposition to the training. Ms. Yeatts reviewed and discussed the proposed language options for the regulations with the Committee.

Dr. Bonwell moved that the Committee recommend to the Board the adoption of the following language, with the understanding that staff will do some wordsmithing: The supervising dentist shall be responsible for assuring that dental assistants have annual training in infection control standards required by OSHA and as recommended by the CDC. Newly hired DA I shall receive training within 60 days of hire. Documentation records should show date of hire and date of completion of initial and annual training for all assistants and be maintained for three years.
Following a second, a roll call vote was taken. The motion passed.

TRAINING AND SUPERVISION OF DIGITAL SCAN TECHNICIANS:

Ms. Yeatts explained to the Committee that Legislation does not authorize the Board to license digital scan technicians, but the Board is required to approve a training program for them. After discussion, Ms. Reen suggested that each Committee member send her an email regarding their concerns or questions pertaining to digital scan technician regulations, and that another meeting be scheduled to discuss the Committee's concerns.

Dr. Catchings moved that each Committee member send an email to Ms. Reen by May 1, 2021, outlining their concerns or questions regarding the regulations for digital scan technicians, and then another meeting will be scheduled to discuss the information received by Ms. Reen. Following a second, a roll call vote was taken. The motion passed.

PULP CAPPING BY DENTAL ASSISTANTS II:

Ms. Yeatts provided information about the laws in other states regarding pulp capping, however, there was no regulatory action required by the Committee. The Committee discussed removing pulp capping as a procedure Dental Assistants II can do in the future. Ms. Reen stated to the Committee that there is direct and indirect pulp capping; and in discussions with teaching programs, it is the indirect pulp capping that is being taught where there is no exposure. Ms. Yeatts explained that pulp capping is allowed according to the current regulations and is not a procedure that can be taken away. Mr. Rutkowski concurred with Ms. Yeatts and stated there is no legal mechanism to remove the certificate once it is obtained by a Dental Assistant II.

Dr. Chaudhry moved that the Committee recommend to the Board that it initiate rulemaking by publishing a NOIRA to remove pulp capping from the scope of practice for Dental Assistants II. Following a second, a roll call vote was taken. The motion passed.

SLEEP STUDY PROTOCOLS:

Ms. Reen requested that the Committee provide direction on what it wants to do about sleep study protocols. She explained the fundamental question is what role dentists have in diagnosing patients, whether it is a sleep study done through a polysomnographer or a home sleep study, is it within the scope of practice of dentistry as defined in the statute. The practice of polysomnography is under the direction of a medical physician and dentists can refer for sleep study. There is no provision currently in place that says dentists can do limited home study and then make a dental diagnosis based on that. The issue is: Is sleep apnea a dental condition? Staff can research the topic and bring information back to the Committee and discuss at the upcoming meeting.

The Committee directed Board staff to conduct research on home sleep studies, how they are conducted, what the regulations are in other states; and once all the information is compiled, convene a meeting with the Committee.

ADJOURNMENT:

With all business concluded, the Committee adjourned at 3:27 p.m.

Sandra J. Catchings, D.D.S., Chair

05/17/2021
Date

Sandra K. Reen, Executive Director

May 19, 2021
Date

Commonwealth of Virginia

Lee, Donna <donna.lee@dhp.virginia.gov>

FW: Public Comment for RLC

2 messages

Sandra Reen <Sandra.Reen@dhp.virginia.gov> Thu, Apr 22, 2021 at 12:21 PM
To: Donna Lee <donna.lee@dhp.virginia.gov>

From: Alex Vaughan <drvaughan@vatotalsleep.com>
Sent: Thursday, April 22, 2021 11:46 AM
To: Sandra Reen <sandra.reen@dhp.virginia.gov>
Subject: Public Comment for RLC

Good Morning,

I would appreciate the opportunity to address the RLC at their upcoming meeting on Friday, April 23, 2021.

I have attached written comments to this e-mail as well as a copy of my prior comments related to Home Sleep Apnea Testing that I submitted to the entire Board at the last Business Meeting for reference.

Thank you very much,

Alex

Alexander T. Vaughan, DDS, MS

Diplomate, American Board of Orofacial Pain

Dental Director | Virginia Total Sleep | Orofacial Pain

P: (804) 625-4064

F: (804) 625-4066

VS VIRGINIA TOTAL SLEEP

April 22, 2021

Dr. Sandra Catchings
Chair, Regulatory Legislative Committee
Virginia Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

Dr. Catchings and Members of the Committee,

I write to you on behalf of myself and my patients in response to the request by the American Academy of Sleep Medicine regarding home sleep testing. I believe I may offer some clarifications as the specialty of orofacial pain typically encompasses dental sleep medicine as well.

I have included with this letter a copy of my past comments at the March 19, 2021 Board Business Meeting for reference and today I wish to provider further clarification based on the discussion had during that Business Meeting.

Sleep Testing Modalities

There are generally two main modalities of "sleep testing". The most well known modality is an attended polysomnogram (PSG). As the name implies, this testing is comprised of recording multiple variables during sleep to provide a comprehensive analysis of a patient's functions during sleep. A PSG is typically completed in a sleep lab where a patient is monitored throughout the test by a Licensed Polysomnographic Technologist. The technologist's function is to apply the various electrodes and apparatus necessary for the PSG, analyze and score the study, and intervene during the study as necessary for the safety of the patient or for accuracy of the test (e.g. replace a sensor the fell off during the study).

A PSG is used to diagnose a large variety of sleep disorders including insomnia, sleep-related breathing disorders, movement disorders, disorders of excessive somnolence, and parasomnias.

A PSG will typically utilize the following "channels" for monitoring and scoring: electroencephalography, electrooculography, chin and leg electromyography, airflow, thoracoabdominal bands, snoring sensor, body position, electrocardiography, and oxygen saturation.

The second, and now much more common, modality of "sleep testing" is the home sleep apnea test (HSAT). While there are multiple defined "types" of HSATs, the general idea is that an HSAT is designed to simply evaluate a patient's breathing and effect of breathing during sleep to allow for the positive diagnosis of sleep apnea.

An HSAT is designed and approved by the FDA for at home use in which the patient is the "technologist". The patient applies the sensors and apparatus necessary for the HSAT and there is no live monitoring of the data. The other name of this test is an unattended polysomnogram.

An HSAT will typically utilize the following "channels" for monitoring and scoring: airflow, thoracoabdominal bands, body position, and oxygen saturation.

Scope of Medicine vs Dentistry

During the Business Meeting there was a comment made that Polysomnographic Technologists are regulated by the Board of Medicine. I wish to quickly highlight that Chapter 29 of Title 54.1 of the Code of Virginia, "Medicine and Other Healing Arts", § 54.1-2901 states:

A. The provisions of this chapter shall not prevent or prohibit:
    5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his usual professional activities

A plain text reading is clear that while the Board of Medicine may regulate Polysomnographic Technologists, that the existence of such license and regulation has no bearing on the practice of dentistry.

As the committee is aware, dentistry is defined in Chapter 27 of Title 54.1 of the Code of Virginia as:

> "'Dentistry' means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical, or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent, and associated structures and their impact on the human body."

Obstructive sleep apnea is typically managed through one of 4 main modalities. Positive airway pressure devices (CPAP, APAP, BiPAP), oral appliance therapy (mandibular advancement device, tongue retainer device), maxillomandibular advancement surgery (MMA), and/or hypoglossal nerve stimulation (HNS). Of those modalities, 3 clearly target intra-oral structures (oral appliance therapy, MMA, and HNS) with the remaining modality, PAP devices, targeting the oropharynx.

These modalities target the oral cavity as well as adjacent and associated structures specifically because the etiology of obstructive sleep apnea is so often related to these structures and their associated collapse during sleep.

There is clearly no question that the treatment of obstructive sleep apnea falls within the scope of dentistry. As dentistry is currently defined, our license includes not only the treatment by the evaluation of these conditions as well.

Ordering vs Diagnosing

At the heart of this discussion is an important distinction between ordering vs interpreting/diagnosing. Specifically, the American Academy of Dental Sleep Medicine (AADSM) position paper states that ordering an HSAT is within the scope of dentistry and that only a sleep physician can render the diagnosis.

The American Academy of Sleep Medicine's (AASM) letter improperly implied that the AADSM was advocating that both ordering and interpreting were within the scope of dentistry. At this time, there was no such recommendation from the AADSM to include diagnosing sleep apnea.

As the AASM and AADSM both highlight, obstructive sleep apnea is only one of many different sleep disorders and as such, a sleep physician in an important factor in accurate diagnosis. This is why the AADSM is not advocating that dentists provide the diagnosis of apnea.

Like other diagnostic testing such as radiology, pathology, and serology, home sleep testing is comprised of ordering, rendering, and interpreting. These stages can be completed by the same provider or multiple providers. Within dentistry, for example, we often order, expose, and interpret our own radiographs; whereas in medicine, the ordering, rendering, and interpreting provider are often 3 separate providers.

The AADSM position is that the ordering and dispensing of home sleep apnea testing is within the scope of dentistry as evaluation of a patient's oral structures is clearly within the scope of dentistry.

As a home sleep apnea test is approved by the FDA for at-home use, many HSATs are dispensed through mail-order services. In these cases the study is ordered by a provider and the study is then sent to the patient directly with no contact with a provider.

Prior Board Determinations

During the Business Meeting, Dr. Zapatero noted that the AADSM website lists that Virginia does not allow dentists to order an HSAT. This is based on a quote attributed to the "Board of Dentistry" that states:

> The advice given to me by the Board's attorney, in response to previous inquiries from dentists about testing patients for sleep apnea, is that a Virginia dentist may refer a patient to a polysomnographic technologist for a sleep study but a Virginia dentist cannot conduct sleep studies. The technologist is required to report sleep study results to the supervising physician who could refer the patient to a dentist for dental treatment.

In my search of the Board of Dentistry's website as well as the minutes of past meetings of the Board, I was unable to find any determination of the boards position as it relates to this question.

If there was a past discussion of the board as it relates to this matter, it may be helpful to have that cited as currently there is no published opinion of the board and the AADSM may have been provided inaccurate information leading to the statement on their website.

However, this has clearly led to confusion and it may be prudent for the Board to provide an official opinion or request that the AADSM update their website by removing this reference.

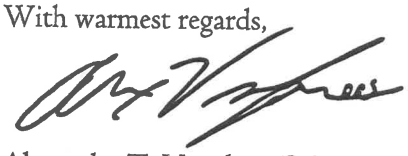
Requested Action

My hope is that this letter has provided some insight into the complexities of this issue. I am also hopeful that it has shown that these complexities involve multiple stakeholders. As indicated by the Public Participation Guidelines of the Board in 18VAC60-11-70, it would be my request that the Committee recommend the formation of a regulatory advisory panel (RAP) to provide the professional specialization needed to assist the agency in addressing this specific regulatory issue.

Alternatively, if the Committee feels it has been provided with enough background on this question, then I believe it is clear that the ordering of a home sleep apnea test is within the scope of dentistry. This would not include the diagnostic interpretation of such a study as that would be reserved for a sleep physician.

I thank the Committee for the time and careful consideration of this request. I also offer my support or help in any manor as one of the few orofacial pain specialists in Virginia and would be happy to provide further comment as requested. Should the Committee or Board determine that the formation of a RAP is appropriate, I also will happily serve if requested by the Board.

With warmest regards,



Alexander T. Vaughan, DDS, MS
Dental Director, Orofacial Pain
Virginia Total Sleep

Diplomate, American Board of Orofacial Pain
Fellow, American Academy of Orofacial Pain

VS VIRGINIA TOTAL SLEEP

March 18, 2021

Dr. Augustus Petticolas
President
Virginia Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

Dr. Petticolas and Members of the Virginia Board of Dentistry,

As one of Virginia's orofacial pain specialists, I'd like to take a brief moment to respond to a letter sent by the American Academy of Sleep Medicine (AASM) to all state boards of dentistry. In their letter, the AASM highlights their concerns regarding the recently published position statement of the American Academy of Dental Sleep Medicine. In that position, the American Academy of Dental Sleep Medicine finds that ordering of home sleep tests is within the scope of dentistry. Importantly, this position statement does not state that interpretation of these tests is within the scope of dentistry.

According to a report commissioned by the American Academy of Sleep Medicine and published in 2016, an estimated 29.4 million adults in the United States at that time had sleep apnea and of those, 80% were undiagnosed. In 2019, studies estimated an increase to 54 million adults with sleep apnea. Assuming 80% remained undiagnosed, that may leave as many as 43 million undiagnosed.

Of concern to me, my patients, and my colleagues is that this straw man argument regarding interpreting sleep tests will continue to harm the 80% of patients with sleep apnea that remain undiagnosed due to reduced access to care currently available.

In their letter, our physician colleagues consistently refer to home sleep studies as "medical" testing, inferring that there is somehow a different patient between the two fields. We would never say a pediatrician examining a patient's mouth for tooth development or a physician managing oral candidiasis is providing "dental" treatment. After all, we should be allies fighting this fight together as we are both treating our patient's overall health.

To provide context, a home sleep test typically measures respiratory volume, respiratory effort, pulse rate, and blood oxygenation while a patient sleeps. If we consider these metrics as something only a physician is qualified to measure, would that not imply that dentists should no longer perform sedation? Afterall, the standards for sedation require monitoring of those exact same values.

Again, I wish to highlight where I feel our physician colleagues may have erred. The American Academy of Dental Sleep Medicine's position statement clearly states that ordering and administering testing is within the scope of dentistry but that "data from [Home Sleep Apnea Tests] should be interpreted by a licensed medical provider for initial diagnosis and verification of treatment efficacy."

10120 W Broad St Suite I, Glen Allen, VA 23060 | P: (804) 625-4064 | F: (804) 625-4066

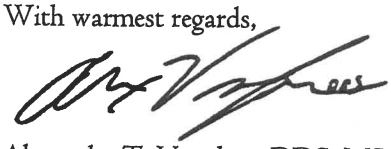
This is a similar situation to that of hypertension. Dentists have played an extremely key role in the early detection and treatment of hypertension through monitoring our patients with appropriate referral to physicians for interpretation of these test values. As we know, many of our healthy patients see their dentists more often than their physicians and we are a key component of the early detection of many diseases.

Fortunately, both medicine and dentistry practice self-governance. Just as it would be inappropriate for a dentist to attempt to restrict the practice of medicine, so too is it inappropriate for medical associations to attempt to restrict the practice of dentistry, chiropractic, pharmacy, or the practice of any of our other colleagues in the health professions.

I strongly urge the board to either consider the aforementioned letter as received with no action or, should there be a desire to take these concerns under further review, to appoint a Regulatory Advisory Panel composed of the various stakeholders and specialties to provide the professional specialization and expertise necessary to address this specific regulatory issue.

As one of the now 4 orofacial pain specialists that are licensed in Virginia, I am happy to provide any guidance, support, background, and help that the board deems necessary and appropriate as it relates to this matter or any other orofacial pain matter in the future. Thank you very much for your time and careful consideration of these issues.

With warmest regards,



Alexander T. Vaughan, DDS, MS
Dental Director, Orofacial Pain
Virginia Total Sleep

Diplomate, American Board of Orofacial Pain
Fellow, American Academy of Orofacial Pain