

**VIRGINIA BOARD OF DENTISTRY
BOARD MEETING MINUTES
September 15, 2017**

- TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:02 a.m. on September 15, 2017, at the Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, Virginia 23233.
- PRESIDING:** John M. Alexander, D.D.S., President
- BOARD MEMBERS PRESENT:** Tonya A. Parris-Wilkins, D.D.S.
Sandra J. Catchings, D.D.S.
Nathaniel C. Bryant, D.D.S.
Augustus A. Petticolas, Jr., D.D.S.
Tammy C. Ridout, R.D.H.
Patricia B. Bonwell, R.D.H., PhD
James D. Watkins, D.D.S.
Jamiah Dawson, D.D.S.
Carol R. Russek, JD
- 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
Sheila Beard, Executive Assistant for the Board
- COUNSEL PRESENT:** James E. Rutkowski, Assistant Attorney General
- OTHERS PRESENT:** Lisa Hahn, Chief Deputy Director, DHP
- ESTABLISHMENT OF A QUORUM:** All members of the Board were present.
- Dr. Alexander called the meeting to order then Ms. Reen read the emergency evacuation procedures.
- PUBLIC COMMENT:** Dr. Alexander explained the parameters for public comment and opened the public comment period.
- Dr. Karen McAndrew**, liaison for the VDA, supported maintaining the requirement for passage of a clinical examination for licensure. She noted that the ADA is working on development of a national clinical examination.
- Dr. David Sarrett**, Dean of the VCU School of Dentistry, supported maintaining the requirement for passage of a clinical examination for licensure, stating that it is risky for a foreign trained dentist to get

licensure by completing only a PGY-1 program. Dr. Sarrett suggested that having an Objective Structured Clinical Exam would test an applicant's clinical judgment and provide better licensure portability.

Dr. John Riviere stated it would be a mistake to recognize new specialty boards with insufficient oversight, citing his concerns for patient safety and false advertising.

**APPROVAL OF
MINUTES:**

Dr. Alexander asked if there were any corrections to the 4 sets of minutes presented in the agenda package. Hearing none, a motion by Dr. Petticolas to adopt these minutes was seconded and passed.

Dr. Alexander asked if there were any changes to the minutes for the September 7, 2017 Telephone Conference Call. Hearing none, a motion by Dr. Watkins to adopt these minutes was seconded and passed.

**DHP DIRECTOR'S
REPORT:**

Ms. Lisa Hahn, Chief Deputy Director of DHP, reported on the progress of the agency workgroup addressing the requirement for e-prescribing of opioids which is to be implemented in 2020. She added that another workgroup is developing the curriculum for a course addressing pain management, the appropriate use of opioids and addiction to be taught in programs training health professionals who will prescribe or dispense medication.

Ms. Hahn presented the newest feature to the DHP website, a prominently displayed online complaint form.

She also announced the plans to relocate the Board of Dentistry staff on the third floor to provide more space.

**LIAISON/COMMITTEE
REPORTS:**

Nominating Committee. Dr. Watkins reviewed the draft minutes of the Committee then moved the election of Dr. Alexander as President, Dr. Parris-Wilkins as Vice-President, and Dr. Petticolas as Secretary/Treasurer. The motion was seconded and passed.

SRTA. Dr. Watkins stated the annual meeting was held August 4-6 in Myrtle Beach, SC. He said the primary focus was the vote to return to ADEX. He added that ADEX is developing an application process before considering SRTA's request. Ms. Levitin's report on the Dental Hygiene discussions was noted and Dr. Bonwell referenced her report and spoke about the Dental Hygiene Educators Forum.

BHP. Dr. Watkins stated he did not attend the last meeting and reported that nothing directly related to the Board of Dentistry is currently being addressed.

Exam Committee. Dr. Watkins stated there is nothing new to report.

Regulatory-Legislative Committee. Dr. Petticolas stated the requirements for having capnography equipment for administering sedation are now in effect. He reported that the Committee's recommendation for the continuing education course for remote supervision will be addressed as an action item. He added that the Committee decided not to recommend changing the definition of Dental Assistants I as proposed by the Regulatory Advisory Panel.

ADEX. Dr. Bryant said the annual conference was held on August 11-13, 2017 in Chicago, IL. He stated some changes to the ADEX examination process for patient based exams have been implemented to make it easier to administer.

AADB. Dr. Alexander said the AADB is a valuable resource then reviewed the agenda topics for the October annual meeting, indicating that he, Dr. Parris-Wilkins and Ms. Reen will be attending. Dr. Watkins asked Ms. Reen to explain the AADB's membership policies. She said there are two levels of membership, the Board can join as a body and then individual memberships. She noted that there are no voting privileges associated with the Board membership and that only individual members present at the meeting can vote. She explained that state policy limits the number of people who can travel so the Board pays for three individual memberships for two board members and the executive director to attend. She explained that other Board members do not need to become members.

Advisory Panel on Opioids. Dr. Alexander reported that work on the Board's regulations continues and noted that the Board does need to address the requirement for prescribing Naloxone.

LEGISLATION AND REGULATIONS:

Status Report on Regulatory Actions. Ms. Yeatts said the June 9, 2017 Business meeting minutes need to be amended to correct the information regarding the two June 14, 2017 actions then addressed the following regulatory actions:

- Conforming the regulations to reflect the language used in the 2016 ADA Guidelines for moderate sedation. Ms. Yeatts reviewed the public comment received, noting that it focused on the ADA Guidelines rather than the NOIRA. She said the proposed changes are to replace the term "conscious moderate sedation" with "moderate sedation" throughout and to delete the provision for training in enteral moderate sedation. Following discussion, Dr. Watkins's motion to adopt the proposed regulations was seconded. In response to a question, Ms. Yeatts clarified that dentists holding an enteral permit can renew the

permit but no new enteral permits can be issued. Dr. Sarrett asked the Board to be aware that the ADA Guidelines are specific to administering to adults only. The question was called and the motion passed.

- Amending the emergency regulations for remote supervision to include the requirements for the continuing education course dental hygienists are required to take before practicing under remote supervision and starting the process to replace the emergency regulations by issuing a Notice of Intended Regulatory Action (NOIRA). Ms. Ridout moved the adoption of the proposed amendments to 18VAC60-25-190 as an emergency action and approval for a NOIRA to replace the emergency action. The motion was seconded and passed.
- Adopting proposed Opioid regulations to replace the emergency regulations after considering the comments on requiring issuance of a Naloxone prescription. Discussion followed about amending this provision. Ms. Yeatts suggested changing the language to require consideration of prescribing Naloxone when there is concomitant use of benzodiazepine. A motion by Ms. Ridout to adopt the amendment proposed by Ms. Yeatts was seconded and passed. Dr. Catchings moved to adopt the proposed regulation as amended to replace the emergency regulation. The motion was seconded and passed.
- Amending the advertising regulations to delete the provisions on advertising as a specialist in 18VAC60-21-80(G)3 and 4 as proposed by the Regulatory-Legislative Committee. Discussion followed about revising the proposal to delete the word "false" but keep the language on claims of superiority. Questions were also raised about the provision in the Code of Virginia on ADA recognized specialties. Mr. Rutkowski advised that only the General Assembly can change the Code. Ms. Yeatts proposed keeping number 3 to address claims of superiority and revising provision 4. A motion made by Ms. Ridout to adopt the amendment as proposed was seconded and passed. The question of submitting a legislative proposal for administrative review for the 2019 Session of the General Assembly was referred to the Regulatory/Legislative Committee.
- Adopting a NOIRA on changing the Dental Assistant II education requirements to a competency based standards as proposed by the Regulatory-Legislative Committee. Dr. Watkins moved to adopt the NOIRA as proposed. The motion was seconded and passed.

**BOARD DISCUSSION/
ACTION**

Dr. Alexander acknowledged the contributions of the Regulatory Advisory Panel on Prescribing Opioids and noted that the regulatory action adopted today takes care of this issue for now. He also

reported that work is underway on scheduling a meeting and a forum for the Regulatory Advisory Panel being convened to review the regulations on Controlled Substances, Sedation and Anesthesia for consistency. Ms. Reen added that the plan to have a report from the RAP for the Regulatory-Legislative Committee to meet on October 20, 2017 isn't working out so she would talk with Dr. Petticolas about whether or not the Committee will meet that day.

**BOARD COUNSEL
REPORT:**

Mr. Rutkowski reported that following further discussion within the Office of the Attorney General he revised the guidance he had given to Board staff regarding out of state dental students in a CODA accredited program being able to volunteer in Virginia. He determined that the Code provision on permissible practices does allow these out of state students to provide indigent care when they are supervised by faculty of a CODA accredited program.

Additionally, Mr. Rutkowski advised Board members to be aware of possible conflicts that might arise in their personal activities which could lead to a lawsuit. He explained that recently a member of another board was seen having dinner with a lobbyist and such a meeting raises questions of a conflict of interest. He said if this member was sued, the Office of the Attorney General (OAG) could not represent them. He said the OAG can only represent a board member being sued for a conflict of interest that may have occurred while performing the official duties of the Board.

**REPORT ON CASE
ACTIVITY:**

Ms. Palmatier reviewed her report noting that from January 1, 2017 through August 25, 2017, 236 cases were received and 233 were closed. She also noted that in Q4 of 2017 60 patient care cases were received and 66 were closed for a 110% clearance rate.

Ms. Palmatier then addressed the importance of being consistent with sanctions. She said the committees are beginning to show inconsistencies with imposing reprimands and monetary penalties. Ms. Reen asked the Board if it wanted to reaffirm \$1000 per violation as the standard for setting monetary penalties. Ms. Hahn suggested having Neal Kauder discuss the information used to develop percentages and figures for the sanction reference forms. Ms. Hahn added that DHP is preparing a video for board members that will address probable cause. The Board agreed by consensus to invite Mr. Kauder to give a presentation at the December meeting.

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

Board Revenue. Ms. Reen reported that the Board has a large cash balance which by law needs to be reduced and that she is proposing using a significant portion of the balance to transition dental and dental hygiene license renewals to birth months. She explained that Dr. Brown, Ms. Hahn, and Mr. Giles, the DHP Budget Manager, are supportive of this action and numbers are being worked to project a

fee reduction to prorate renewals issued in March 2019 to extend the license renewal period for each licensee to their respective 2020 birth month. Ms. Reen said the other options for reducing the cash balance are to do a one-time reduction or to reduce the annual renewal fees indefinitely. Following discussion, the Board agreed by consensus to support using the cash balance to transition renewals to birth months. Ms. Yeatts said the Board should adopt the implementation plan and the regulatory action needed to reduce fees at its upcoming December meeting.

Updating Guidance Documents. Ms. Reen presented two revised guidance documents for Board action:

- Guidance Document 60-13 on remote supervision which has been revised to incorporate the current statutory provisions and the emergency regulations. Ms. Yeatts explained that the answer to number 4 in the proposal needs to reflect that the regulations with the course requirements are not final and she read the language she proposed using. A motion by Dr. Bonwell to adopt the guidance document with the language proposed by Ms. Yeatts was seconded and passed.
- Guidance Document 60-17 on the recovery of disciplinary costs has been revised to modify the per hour fees to be consistent with the actual costs incurred in FY 2017. Dr. Watkins moved to adopt the document as presented. The motion was seconded and passed.

Status of Adding PGY1 Pathway. Ms. Reen explained this change cannot be done through a regulatory action until the statute requiring passage of a clinical examination is changed. She said the Board needs to decide if it wants to pursue this and advised that a legislative proposal could not be submitted until the 2019 Session of the General Assembly. Discussion followed about the adequacy of one year of training for dentists who were trained in other countries. Ms. Russek moved to have staff bring a legislative proposal to the December 2017 meeting. The motion was seconded and passed.

Status of Applicant Law Exam. Ms. Palmatier reviewed the work to date on establishing a web based exam on the Board's web page using the Storyline tools. Ms. Reen reported that Dr. Brown reviewed the request to purchase Storyline and he requested she provide more information on costs and a report on the other board executives' interest in having a web based tool.

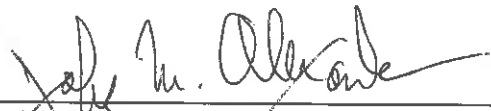
Licensing Update. Ms. Reen reported that the Board's licensing numbers are healthy with over 14,000 licensees.

Per Diems. Ms. Reen noted that since July 1, 2017 Board members have been receiving \$50 per day in compensation for participation in official business meetings as addressed in DHP's Policy adopted on 7/26/2017.

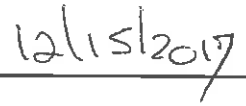
Minutes. Ms. Reen said the Board would need to address Ms. Yeatts's request for amendment of the June 9, 2017 business meeting minutes to correct the information regarding the two June 14, 2017 actions in her Status Report on Regulatory Actions at its December meeting.

Amendment. Ms. Reen said she was asked to see if the Board would consider changing a term in the proposed DA II regulations being included in the NOIRA from "taking final impressions" to "making final impressions" which is the standard dental terminology. The Board agreed by consensus to change the term to "making final impressions."


ADJOURNMENT: With all business concluded, the meeting was adjourned at 12:15 p.m.




John M. Alexander, D.D.S., President



Date



Sandra K. Reen, Executive Director



Date