Approved

VIRGINIA BOARD OF DENTISTRY
MINUTES
June 10, 2016

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:03 a.m. on June 10, 2016, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, Virginia 23233.

PRESIDING: Charles E. Gaskins III, D.D.S., President

BOARD MEMBERS PRESENT:
John M. Alexander, D.D.S
Tonya A. Parris-Wilkins, D.D.S.
A. Rizkalla, D.D.S.
Evelyn M. Rolon, D.M.D.
Carol R. Russek, J.D., Citizen Member
Melanie C. Swain, R.D.H.
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
Donna Lee, Discipline Case Manager for the Board

OTHERS PRESENT: David E. Brown, D.C., DHP Director

ESTABLISHMENT OF A QUORUM: All members of the Board were present.

Ms. Reen read the emergency evacuation procedures.

Dr. Gaskins explained the parameters for public comment and opened the public comment period.

PUBLIC COMMENT: **Dr. Richard Taliaferro, DDS**, President of the Virginia Dental Association, commended the Board for attending dental association meetings around the state to inform dentists about regulatory changes. He also expressed appreciation for the Board's response to concerns about the regulations governing the administration of nitrous oxide analgesia and asked the Board to make the regulations and requirements appropriate to the degree of risk.

APPROVAL OF Minutes: Dr. Gaskins asked if there were any corrections to the March 10, 2016 Formal Hearing minutes; March 11, 2016 Business Meeting

minutes; and April 27, 2016 Nitrous Subcommittee Meeting minutes. These minutes were approved as published.

DHP DIRECTOR'S REPORT:

Dr. Brown reported on DHP's staff training held on May 24-25, 2016, noting that Secretary Hazel gave a presentation and staff rated the training as 4.4 out of a scale of 5. He stated that DHP and other state agencies are participating in launching a new webpage on opioid abuse, Virginia Aware, on July 1, 2016. He welcomed any suggestions for a section on dentists and good links for pain management that could be made available on the webpage.

Dr. Brown addressed the Board's authority to recover disciplinary costs, commenting that the law is permissive and allows for discretion on assessing these cost. He then posed questions about the Board's practice of assessing costs for every respondent. He asked about fairness for dental hygienists whose income is typically less than a dentist's; the impact on a licensee who is not working; when respondents are notified of the assessment; and if a monetary penalty loses impact when it is significantly less than the administrative costs being assessed. Dr. Brown said he wanted to make the Board aware of his questions since some of the current Board members were not part of the Board when this law was instituted.

LIAISON/COMMITTEE REPORTS:

Board of Health Professions (BHP). Dr. Watkins stated he did not have anything to report.

AADB. Dr. Parris-Wilkins referenced her report and stated that there are a lot of topics that boards are concerned about across the country so the meeting was very enlightening and at times contentious. Ms. Palmatier said she didn't have any additional comments.

ADEX. Dr. Rizkalla gave a presentation on the five agencies administering licensure exams and the test development agency, ADEX, noting that licensure portability is an important matter to dental professionals. He stated that CDCA and CITA administer the ADEX dental exam, while CRDTS, SRTA, and WREB administer their own exams. Then he addressed the letters sent by the ADA and ADEA to state dental boards indicating any state dental board that accepts fewer than all of the available clinical licensure examinations is acting arbitrarily and speciously in an anticompetitive manner. Dr. Rizkalla said Virginia accepts all testing exams so no immediate action was needed, but the Board should be aware of the national issues.

Ms. Swecker asked what steps had been taken for members of the Virginia Board to examine for CITA. Ms. Reen stated she is obtaining information from the agency.

Ms. Reen said the Board may want to consider rejoining the AADB, if it wants to have a voice in the national discussion of licensure examinations. She explained the Board could join; then pay for designated board members individually to have voting privileges. She suggested that the Exam Committee could be convened to make recommendations on rejoining and on establishing a position on clinical examinations. Several Board members expressed an interest that the Board should join AADB in order to have a voice in the upcoming matters that will be addressed by AADB. Dr. Brown said he would consider requests to send more than two Board members to the meetings to facilitate participation. He also suggested delegating discussion of Board participation to the Board president, Ms. Reen, and him to discuss finances to determine how many Board members can join AADB annually.

Ms. Swecker moved that the Board rejoin AADB with the Board delegating to the president of the Board in consultation with Ms. Reen and Dr. Brown to review the finances to determine how many Board members can join AADB annually. The motion was seconded and passed.

Regulatory-Legislative Committee. Ms. Swain stated that the Committee met on May 6, 2016, and reviewed the minutes with the Board. She stated that the next meeting is scheduled for October 14, 2016.

Nitrous Subcommittee Meeting. Dr. Gaskins stated that the meeting held on April 27, 2016 was very productive, and that any proposed changes to the legislation would need to be voted on today by the Board so that it possibly can be a fast-track action.

LEGISLATION AND REGULATIONS:

Status Report on Regulatory Actions. Ms. Yeatts reported that the regulatory action requiring capnography for monitoring anesthesia or sedation, and the regulations addressing the qualifications for restricted or temporary licenses are at the Governor's Office for review.

Board Action on the Monitoring of Nitrous Oxide and Minimal Sedation. Ms. Yeatts reviewed the changes recommended by the Nitrous Subcommittee to establish a new section of regulation which addresses the administration of only nitrous oxide and to modify the provisions for the administration of minimal sedation in the following sections:

- 18VAC60-21-10(D) – Add definitions for the terms "analgesia" and "inhalation analgesia" and modify the definition of the term "minimal sedation."
- 18VAC60-21-260(D)(2) – Amend to add Body Mass Index (BMI).
- 18VAC60-21-279 – Add this section to address administration of only inhalation analgesia (nitrous oxide).
- 18VAC60-21-280(A)(2) – Amend to replace the words "nitrous oxide" with the words "minimal sedation."
- 18VAC60-21-280(C)(1)(d) - Amend to replace the word "indirect" with "direct."
  The Board decided to replace the words "under direct supervision" with the words "with the dentist present in the operatory."

Ms. Yeatts then recommended amending 18VAC60-21-279(D) to add blood pressure monitoring equipment because blood pressure is a required vital sign. The Board agreed.

Dr. Wyman moved to adopt the proposed regulations as a fast-track action. The motion was seconded and passed.

Board Action on Public Participation Guidelines. Ms. Yeatts stated that 18VAC60-11-50(A)(ii) was added to conform to an amendment made to the language in the Code of Virginia. Ms. Swain moved to advance the amendment to 18VAC60-11-50 by fast-track action. The motion was seconded and passed.

Board Action on HB319 – Volunteer Hours to Count Toward CE Requirement. Ms. Yeatts presented the amendments to Chapter 21 and Chapter 25 recommended by the Regulatory-Legislative Committee. The Board discussed the ratio of CE credit to number of volunteer hours without changing the Committee's recommendation. What constitutes a "free clinic" was questioned because some clinics charge an administrative or "sliding scale" fee. Mr. Rutkowski was asked to research this matter and to report his findings at the Board's September meeting.

Dr. Alexander moved that the Board adopt the amendments to Chapter 21 and Chapter 25 as presented by Ms. Yeatts for fast-track action. The motion was seconded and passed.

Board Discussion on SB712 – Remote Supervision of Dental Hygienists. Ms. Yeatts reviewed the draft regulations recommended by the Regulatory-Legislative Committee. There was a question about whether a dental hygienist employed by a facility might practice under remote supervision. Ms. Reen noted that the legislation requires a dental hygienist to be employed by a dentist in order to practice under the new provisions for remote supervision.

Ms. Yeatts said SB712 becomes effective July 1, 2016, so the Board will adopt regulations for emergency enactment at its September Board meeting.

HB310. Ms. Reen noted that this bill addressing mobile dental clinics will also be addressed at the September Board meeting.

BOARD DISCUSSION/ACTION:

Review and Discussion of Public Comment Topics. Dr. Gaskins reported that Dr. Taliaferro's comments were addressed in the regulatory proposal for monitoring Nitrous Oxide and minimal sedation which was adopted earlier in the meeting.

Dr. Gaskins said the following letters were received as information:

- ADEA Letter to State Board.
- ADEA Letter to Maryland State Board of Dental Examiners
- JCNDE Letter to State Board
- ADEX Letter to State Board

Guidance Document Addressing Failure to Report to the PMP. Ms. Reen informed the Board that the guidance document is a proposal to guide staff in addressing PMP reports of dentists that failed to submit required dispensing reports. Ms. Swain moved to adopt the Guidance Document. The motion was seconded and passed.

ADA Sedation and Anesthesia Guidelines. Ms. Reen asked the Board if it wished to make further comment on these guidelines. Dr. Rizkalla moved that the Executive Director send a letter in support of the information provided and include information on the Board's regulatory action on Nitrous Oxide. The motion was seconded and passed.

REPORT ON CASE ACTIVITY:

Ms. Palmatier reported that from February, 2016, through May 24, 2016, the Board received 139 cases and closed 151. She said, in the first quarter of 2016 (January 1 – March 31, 2016):

- A total of 74 patient care cases were received and 66 were closed for a 89% clearance rate;
- The current pending caseload older than 250 days is 31% and the goal is 20%; and
- 84% of the patient care cases were closed within 250 days and the goal is 90%.

Ms. Palmatier reported on the number of sedation and anesthesia permit holders, noting that there are 442 Permit Holder Locations with some locations having multiple permit holders and some permit holders having multiple locations. She said in the 19 months

since the sedation inspection program began, 52 permit holder locations with approximately 100 permit holders have been inspected.
Ms. Palmatier explained there is a high number of cases that need to be scheduled for informal conferences. She requested that the Board approve adding the following tentative dates to its schedule for informal conferences: July 22, 2016; August 19, 2016; October 28, 2016; and December 16, 2016. She also asked that she be allowed to use any three Board members available on those dates instead of the established special conference committees. Following discussion of using another day of the week and scheduling Thursday afternoon through Friday, the Board agreed to add the requested dates to the schedule and approved using any Board members that are available.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

2017 Proposed Calendar. Ms. Reen stated the calendar is presented for adoption so that room reservations can be made. She added that, once Board appointments are made, adjustments in committee assignments may be needed so she recommended addressing any date changes at the September meeting. Dr. Watkins moved to adopt the 2017 meeting calendar. The motion was seconded and passed.

Guidance Document Addressing Auditing Continuing Education (CE). Ms. Reen reviewed that the Board voted in March to institute an annual random audit; then granted her permission to work on a guidance document for discussion of implementation. She then addressed the following issues:

- **Exemptions and extensions of time to complete CE –** Ms. Reen explained that in practice, licensees are requesting exemptions because that is the option in the regulations and the Board is only granting extensions. Ms. Yeatts added that the Virginia Code is worded exemptions or extensions. After further discussion, the Board agreed by consensus to amend the regulations to add "extensions" by fast track action.
- **Random sample size –** Ms. Reen reviewed the Raosoft Sample Size Calculator, noting that the number to be audited was based on the Board's total number of licensees; to keep the sample size low, even though that meant oral and maxillofacial surgeons and sedation and anesthesia permit holders would be counted more than once, and that inactive licensees are included. She noted that Dr. Carter recommended the figures for the margin of error, confidence level and response distribution, and that she supported using the total count methodology.
- **Deciding annually the scope of audit –** Ms. Reen asked the Board to determine each year the scope of the audit to be

conducted to prevent audit activity from adversely affecting performance on meeting goals for standard of care cases. Board members asked about an audit every two years.

- **Auditing selected licenses** – Ms. Reen explained that the Board currently audits licensees who fail to attest to completing CE on their renewal forms. She asked if the Board wanted to also audit licensees who are under a board order to complete CE in addition to the required 15 hours annually or who have been given extensions for completing CE. Dr. Brown stated that the Board should be consistent with all other boards in DHP and do only a random audit. He added that other boards use temporary staff to conduct audits. Several board members supported auditing the selected licensees as addressed in the draft guidance document.

The Board agreed to Dr. Brown's proposal to edit the Scope of Audits section of the guidance document to read as follows:

> The Board shall conduct an audit of compliance with CE requirements on a random sample of licensees selected from MLO by the DHP IT Department. The sample size shall be determined using both the online Sample Size Calculator by Raosoft (or equivalent algorithm) and the total number of licensees. The Board may also audit the following:
>
> - Active licensees who have completed the terms of a CCA or a Board Order which required completion of CE in addition to the 15 hour requirement per year;
> - Active licensees who failed to respond, or responded "no", to the CE renewal question on the annual renewal form, and/or requested an exemption after license renewal;
> - Active licensees who were granted an extension to meet their CE requirement.

Dr. Rizkalla moved to amend the previous action taken by the Board on March 11, 2016, to change from collecting every year a random sample for CE audit to a biennial CE audit. The motion was seconded and passed.

Dr. Wyman moved to amend the regulations to grant an exemption up to one year prior to the renewal date. The motion was seconded and passed.

Ms. Reen recommended moving her last two items on the Agenda to the September meeting so the disciplinary matter that had been scheduled for 12:30 p.m. could be addressed. All agreed.

Dr. Gaskins noted that the terms of five members are expiring and that at least four of the five were not seeking another term. He, Ms. Swain, Ms. Swecker, Dr. Rolon, and Dr. Watkins all expressed appreciation for the support and guidance they have received and for the great learning experience serving as a Board member has given them.

Dr. Gaskins stated that he had appointed Dr. Rolon and Ms. Swain to the Nominating Committee, and that they will meet today so that a report can be presented to the Board in September.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:38 p.m.

A. Rizkalla DDS
~~Charles E. Gaskins III~~, D.D.S., President

Sandra K. Reen
Sandra K. Reen, Executive Director

9/16/16
Date

September 16, 2016
Date