



VIRGINIA BOARD OF DENTISTRY BRIEFS August 2016

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CAUTION FOR DENTAL HYGIENISTS ABOUT TREATING WITH LASERS

Dental hygienists, who have the knowledge, training and experience needed to perform laser treatment safely, are now permitted to use nonsurgical lasers to perform scaling, root planing or gingival curettage procedures. The Board added lasers to the tools dental hygienists might use after receiving public comment that CODA accredited dental hygiene programs now include training in the use of lasers. Based on these comments, the Board added the use of lasers without establishing education requirements or specifying acceptable equipment. The Board strongly recommends that any dental hygienist who has not completed training in the appropriate use of lasers for hygiene treatment should complete such training before using a laser to treat patients. Failure to do so puts patients at risk and could lead to disciplinary action against a dental hygienist for practicing outside the scope of the needed education, training, and experience which is a violation of §54.1-2706.12 of the Code of Virginia.

REMOTE SUPERVISION OF DENTAL HYGIENISTS

On July 1, 2016, legislation came into effect which will allow a dentist to remotely supervise dental hygienists who are in his/her employment. Such dental hygienists might provide dental hygiene services to patients in the centers and facilities specified in §54.1-2722.F of the Code of Virginia. In this section of the Code, "remote supervision" means that a dentist is accessible and available for communication and consultation with a dental hygienist employed by such dentist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. To review §54.1-2722, use this link, <http://law.lis.virginia.gov/vacode/title54.1/chapter27/section54.1-2722/>. The Board is required to have emergency regulations in effect within 280 days after enactment. The Board will adopt the emergency regulations at its September 16, 2016 meeting. The materials for this meeting will be posted in advance of the meeting at http://www.dhp.virginia.gov/dentistry/dentistry_calendar.htm. The emergency regulations will be in effect on or about January 1, 2017.

MONITORING REQUIREMENTS FOR NITROUS OXIDE/INHALATION ANALGESIA ARE BEING CHANGED

Commenters at the Board's March quarterly meeting explained the negative effects the requirements for monitoring minimal sedation have on pediatric patients receiving only nitrous oxide. Of particular concern was the requirement for pulse oximetry. In response, on April 27, 2016, the Board convened a Nitrous Oxide/Minimal Sedation Subcommittee which recommended establishing a new section of regulations to address the administration of only nitrous oxide/inhalation analgesia. The Board adopted the proposed new section and the needed changes to the section on minimal sedation as a fast-track action at its June 10, 2016 meeting. Use this link, <http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4598>, to see the proposed regulations and the status of the regulatory action.

MORE REGULATORY CHANGES

1. Expanding the equipment for administering conscious/moderate sedation to **require an end-tidal carbon dioxide monitor (capnograph)** is proposed. This requirement will be published for comment on August 22 through October 21, 2016. **A public hearing will be held on September 16, at 9:05 am at 9960 Mayland Drive, Henrico, VA 23233, 2nd Floor.** Use this link for more information, <http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7470>.
2. The Board is amending its **continuing education regulations** for dentists and dental hygienists to allow up to two hours of the 15 hours required for annual renewal to be satisfied by providing volunteer dental services at a health department or free clinic. One hour of continuing education may be credited for three hours of volunteer services. Use this link for more information, <http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7617>.
3. **Mobile dental clinics operated by federally qualified health centers, and free health clinics or health safety net clinics** are now exempt from the requirement to register with the Board. The Board will adopt regulations to include these exemptions as an exempt action at its September 16, 2016 meeting.
4. The Board is amending its **Public Participation Guidelines** by fast-track action to include a Code change which permits a person to be accompanied or represented by counsel at public comment opportunities. This is the link for more information - <http://townhall.virginia.gov/L/viewchapter.cfm?chapterid=2634>.

ALTERNATIVES TO THE LAW EXAM PROPOSAL

Following issuance of a Notice of Intended Regulatory Action (NOIRA) in October, 2015 to require passage of a law exam periodically for renewal, the Board received about 200 comments. The vast majority of commenters opposed being required to take a law exam after initial licensure so the Board withdrew the NOIRA. The Board is reviewing the alternatives recommended by commenters and looking at other states' requirements for further discussion of ways to promote licensee's current knowledge of the laws and regulations governing dental practice.

CAN DENTISTS REFER PATIENTS FOR SLEEP STUDIES?

This is a frequent question so board counsel was asked to review the pertinent laws. The advice received is that a patient can directly request a sleep study and a dentist can refer a patient for a sleep study. In either of these instances, the polysomnographer would perform the study under the direction of a physician and send the study report to the physician to address findings with the patient. The physician has discretion in regard to sharing the results of the study with a dentist who referred a patient.

AUDITING CONTINUING EDUCATION (CE)

On March 11, 2016, the Board voted to institute an annual random audit of licensees for compliance with CE requirements. At its June 10, 2016 meeting, the Board discussed a draft guidance document on the implementation of the audit program and decided to:

- Take fast-track action to amend its regulations to add the option of granting "extensions" as permitted in the Code of Virginia and for granting up to a one year exemption prior to the renewal date.
- Conduct the random audit biennially instead of annually.
- Continue auditing licensees who failed to attest to completing the annual CE requirement, and
- Audit licensees who have completed the terms of a CCA or Board Order which required completion of CE in addition to the 15 hours required annually or who were given extensions for completing the annual CE requirement.

The Board will take action on this guidance document at its September 16, 2016 meeting. The materials for this meeting will be posted in advance of the meeting at http://www.dhp.virginia.gov/dentistry/dentistry_calendar.htm.

INTRODUCING TWO NEW GUIDANCE DOCUMENTS

1. **Guidance Document 60-24, Compilation of Provisions in the Code of Virginia Addressing Dental Practice, Practice of Dentistry by Professional Business Entities, and Practice Locations and the Duties Restricted to Dentists in the Code of Virginia and the Regulations Governing the Practice of Dentistry** - This document addresses what constitutes dental practice; the formation of professional corporations and professional limited liability companies; the provisions on practice locations; and the duties restricted to dentists. This link, <http://www.dhp.virginia.gov/dentistry/guidelines/60-24.doc>, takes you to the document.
2. **Guidance Document 60-21, Policy on Sanctioning for Failure to Report to the PMP** - This document addresses the actions that will be taken by the Prescription Monitoring Program (PMP) and the Board when dentists fail to report dispensing controlled substances in Schedule II (Percocet, Hydrocodone), Schedule III (Tylenol with Codeine), or Schedule IV (Valium) within 7 days of such dispensing. Visit <http://www.dhp.virginia.gov/dentistry/guidelines/60-21.doc> to review this document.

COMPLAINTS, DISCIPLINE, AND OTHER BOARD ACTIONS

This section of BRIEFS gives an overview of the Board's case activity for a six month period. The notices and orders* issued to licensees by the Board can be reviewed on the Board's website in **License Lookup** at <https://dhp.virginiainteractive.org/Lookup/Index> for information on specific licensees and in **Case Decisions** at <http://www.dhp.virginia.gov/enforcement/CDecision/boardresults.asp?board=4> to see the cases closed with a Board Order in a specified time period.

It is important to note that "Yes" beside a licensee's name in **License Lookup means that there is information that must be available to the public pursuant to §54.1-2400.2.G of the Code of Virginia; please note that this may also include proceedings in which a finding of "no violation" was made. You should click on the "Yes" link for additional information. "No" means no documents are available.*

From January 1, 2016 to June 30, 2016, the Board received 206 complaints against its licensees and closed 193 cases. On June 30, 2016, the Board had 310 open cases at various stages in the case adjudication process.

- Of the 193 cases closed, 137 were closed with no violation found or, in a few instances, closed as undetermined.
- During this time period, the Board held 2 formal hearings and 27 informal conferences; entered into 7 Consent Orders in lieu of proceeding to an administrative hearing; closed 1 case with a Confidential Consent Agreement; and closed 19 cases with Advisory Letters.
- One of the two formal hearings addressed an application for license reinstatement. Reinstatement was denied because the applicant failed to demonstrate continuing competence and the ability to practice safely. The second formal hearing resulted in an order for prescribing medication outside the scope of dentistry and without a legitimate dental purpose.
- One of the 27 informal conferences (IFCs) held addressed an application for initial licensure. The license was granted based on the applicant's demonstration of the ability to safely practice.
- The remaining 26 IFCs resulted in Board Orders addressing negligent treatment of patients, failure to document patients' treatment records and fraudulent billing, including:
 1. Failing to perform periodontal evaluation of a patient's teeth;
 2. Failing to treat periodontal conditions prior to performing extensive restorative dental treatment;
 3. Failing to remove all decay from a tooth/teeth;
 4. Failing to completely obturate and fill canals during RCT;
 5. Placing an improperly fitting crown with open margins;
 6. Perforating the root of a tooth while performing treatment;
 7. Practicing outside the scope of a dental license by prescribing medications to patients for the purpose of treating medical conditions;
 8. Failing to document diagnoses for treatment rendered;
 9. Failing to document the number of canals treated during RCT, the working lengths and types of materials used to fill the canals;
 10. Failing to document that treatment was rendered; and
 11. Billing for treatment not rendered or billing separate fees for services that are integral to and inclusive of the primary procedures performed (unbundling).

Between January 1, 2016 and June 30, 2016, 39 sedation permit inspections were conducted. The majority of deficiencies found stemmed from ignorance of the **Drug Control Act** requirements and non-compliance with the documentation requirements in **Part VI of the Regulations Governing the Practice of Dentistry**, particularly sections 18 VAC 60-21-280(F) and (G); 18 VAC 60-21-291(D) and (E); and 18 VAC 60-21-301(E) and (G). Work on 17 inspection cases was completed during this period. To close these cases, the Board issued 12 advisory letters; 1 Confidential Consent Agreement; and 4 letters to permit holders thanking them for being in compliance with all the legal requirements addressed in the inspections.