Approved

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
NOVEMBER 4, 2011

TIME AND PLACE: The meeting of the Regulatory-Legislative Committee of the Board of Dentistry was called to order at 9:05 a.m., on November 4, 2011 in Training Room 1, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Herbert R. Boyd, D.D.S., Chair

MEMBERS PRESENT: Jacqueline G. Pace, R.D.H.
Robert B. Hall, Jr., D.D.S.

MEMBERS ABSENT: Meera A. Gokli, D.D.S.
Surya P. Dhakar, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Huong Q. Vu, Operations Manager

OTHERS PRESENT: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
Howard Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With three members present, a quorum was established.

PUBLIC COMMENT: **Dag Zapatero, D.D.S.,** from Virginia Beach noted that he addressed the Board in December 2010 about offshore dental laboratory issues. He added that he is a co-author of the VDA's Virginia Dental Laboratory Safety Act that the Committee will discuss and he is here to answer any questions the Committee has.

APPROVAL OF MINUTES: Dr. Boyd asked if the Committee members had reviewed the September 8, 2011 minutes. No changes or corrections were made. Dr. Hall moved to accept the September 8, 2011 minutes. The motion was seconded and passed.

STATUS REPORT ON REGULATORY ACTIONS: **Registration of Mobile Clinics** – Ms. Yeatts stated that regulations for mobile dental clinics are currently not in force because the 6-month extension that was granted for the Emergency regulations expired on July 6, 2011. She said she has been in constant contact with the Governor's Office about issuing the final regulations. Ms. Reen explained that the Board has no authority to act if there are complaints or if an application for registration is received. She said that she has consulted with board counsel on the registrations that will expire on December 31, 2011. Mr. Casway

advised her to notify these registrants in writing that their registrations will lapse and they will not be authorized to practice until the needed regulations are in force and new registrations are issued. Ms. Reen reported that she had yet to send the letters because Dr. Cane, DHP Director, asked her to wait while Dr. Cane worked for Governor's approval. Ms. Reen added that it is no longer possible for the regulations to be effective by December 31 even if the Governor approves the regulations now.

Ms. Yeatts added that another option is to extend the expiration date of the registration if the Board knows the regulations are approved for publication. She added that this has been done before.

Sedation/Anesthesia Regulation – Ms. Yeatts stated that the Board adopted the emergency regulations at its September meeting which are required to be in effect by December 27, 2011. Once approved by the Governor, these regs will stay in effect for 12 months and must be replaced by final regulations. She added that the Board also adopted the Notice of Intended Regulatory Action (NOIRA) to replace the emergency regulations at its September meeting.

Radiation certification – Ms. Yeatts stated that the amendment to the radiation regulations has been approved and will be effective on December 22, 2011.

DISCUSSION OF THE GUIDANCE DOCUMENT FOR RECOVERY OF DISCIPLINARY COSTS:

Ms. Reen noted that at the last meeting, the Committee discussed the guidance document needed to implement the recovery of disciplinary costs when the regulations go into effect. At that meeting, she was asked to develop the draft as discussed and to provide information on other states' practices. She was also asked to revise the worksheet to separate investigation costs and monitoring costs. Ms. Reen reported that the information from other states is on P9 and P10 of the agenda package. She added that other states are relying on statutory authority and do not have guidance documents, policy statements or forms addressing the method used to calculate costs. Ms. Reen then referred the Committee to the discussion draft starting on P11. She stated that this guidance document could be recommended for adoption to be released concurrent with the regulations.

Policy - Ms. Reen asked the Committee to focus on the policy language on apportioning costs to reflect the adopted findings of fact and conclusions of law in a case. She added that this raised concerns about consistency and fairness and the possibility of expanding the guidance document once we had some data for setting amounts for types of findings. Extensive discussion followed about apportioning costs, the range of time it takes to investigate a case, setting a cost per finding, deferring action to a later

meeting, concern about being objective and fair from one respondent to the next and the purpose of defraying actual costs. By consensus, the Committee amended the language as follow:
Add "**following the administrative proceeding**" after the first sentence.
Delete the third sentence that starts with "**The Board may exercise discretion to apportion…**"
Delete the last sentence that starts with "**A special conference**" and replace it with a statement that staff will prepare the worksheets.

Assessment of Costs - Ms. Reen said this section was developed to state the per hour costs for investigators or inspectors and to establish a base monitoring cost and a cost per sanction for sanctions imposed. She added that the regulations state the Board will assess the average hourly costs for investigations. She noted that since the costs to be assessed will be specified in the order, the amount charged could be appealed to Circuit Court and any litigation of an assessment would cost more than the amount which might be recovered. Following discussion of the proposed amounts, the Committee decided, by consensus, to advance this section as proposed.

Disciplinary Cost Recovery Worksheet – Ms. Reen noted that the proposed worksheet was divided in two parts as requested by the Committee at the last meeting. The Committee decided to delete the line "**Recovery limited to $_____ because _____**" since costs will not be apportioned.

Ms. Pace moved to recommend this guidance document as amended to the Board for adoption at its December meeting. The motion was seconded passed.

DISCUSSION OF LEGISLATIVE PROPOSALS:

VCU School of Dentistry 2012 Proposing Legislation Bill (relating to the licensure of dental school faculty) – Ms. Reen noted that the Board discussed a similar bill last year and endorsed the intent. She said that the School's 2012 proposed legislation was approved by the Virginia Dental Association House of Delegates on September 23, 2011. She asked the Committee to review the bill and to consider making a recommendation to the Board. The Committee reviewed the language and made the following recommendations for revisions:

- §54.1-2711.1.B – replace "**in other offices or clinics**" with "**in non-affiliated clinics or private practices.**"
- §54.1-2713.A (1) and (2) – replace "**and has never been licensed to practice**" with "**and has never held an unrestricted license to practice.**"
- §54.1-2713.C - replace "**in other offices or clinics**" with "**in non-affiliated clinics or private practices.**"

- §54.1-2714.A – editorial correction needed because there are two #8 items.
- §54.1-2714.C – replace "**twelve months**" with "**twenty four months**," keep "**may not be renewed or reissued,**" and delete "**may be renewed for one 12 month period**."
- §54.1-2725.C - replace "**in other offices or clinics**" with "**in non-affiliated clinic or private practices.**"

Ms. Pace moved to recommend that the Board recommend support of this legislation to Dr. Cane. The motion was seconded and passed.

Virginia Dental Association (VDA) – Ms. Reen stated that the VDA adopted a resolution to amend §54.1-2722(E) to replace the pilot project for dental hygienists employed by the Virginia Department of Health to work under remote supervision to permit such practice in all Virginia Health Districts. She added that the Board recommended support of legislation addressing the pilot project in the last two sessions of the General Assembly.

Ms. Reen added that the VDA is also proposing legislation, the Virginia Dental Laboratory Safety Act, to require dental laboratories conducting business in Virginia to register with the Board in order to engage in the manufacture and repair of dental prosthetic appliances, to disclose material content, and the point of origin and location(s) of manufacture of the prescribed restoration.

Ms. Reen indicated that she provided copies of the information received from Eric Thorn of the National Association of Dental Laboratories and said he is interested in seeing the legislation advance. She also noted that she had asked Dr. Dickinson, the executive director of the VDA, if the VDA might agree to submit a study resolution instead of this legislation.

Ms. Reen added that the Board received a presentation By Dr. Zapatero in which he requested the regulation of dental laboratories. In consideration of this request, the Board received a presentation by Dr. Carter, the executive director of the Board of Health Professions (BHP), on the study parameters used to evaluate the need to regulate a profession or facility at its December 2010 meeting. Following that presentation, the Board decided not to pursue registration of dental labs because the Board's view was it is a business transaction between the dentist and the lab.

Ms. Yeatts then facilitated review and discussion of the proposed legislation. Ms. Yeatts commented that the proposed effective date on July 1, 2012 is not possible because no regulations would be in place. Ms. Reen added that proposed definitions may conflict with existing definitions in the Code. Dr. Boyd stated that the prescribed work order forms that were adopted by the Board cover what is asked of in the proposed legislation.

Discussion followed regarding the purpose of registration, the work order forms adopted by the Board, the responsibility of dentists to address the quality of the products, the potential for a large increase in complaints and administrative proceedings, the stated expectation that complaints will result in loss of registration, and due process requirements. By consensus, the Committee agreed that it is premature to enact this requirement into law and that a study should be recommended. Ms. Pace moved to recommend that the Board send a formal request that the VDA pursue a study resolution to have the BHP study the need to regulate labs instead of advancing legislation. The motion was seconded and passed.

NEXT MEETING: The proposed date of the next meeting will be determined at a later date.

ADJOURNMENT: With all business concluded, Dr. Boyd adjourned the meeting at 12:05 p.m.

~~Herbert R. Boyd, III, D.D.S.~~, Chair

November 8, 2012
Date

Sandra K. Reen, Acting Executive Director

November 9, 2012
Date