VIRGINIA BOARD OF DENTISTRY
AD HOC WORK GROUP ON ADVERTISING
MINUTES
August 20, 2010

TIME AND PLACE: The meeting of the Ad Hoc Work Group on Advertising of the Board of Dentistry was called to order at 10:11 a.m. on August 20, 2010 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, Virginia.

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

MEMBERS PRESENT: William Bennett, D.D.S.
Terry Dickinson, D.D.S.
Michael Link, D.D.S.
Jeffrey Levin, D.D.S.

MEMBER ABSENT: Paul Supan, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director

QUORUM: All but one of the members of the Work Group was present.

ADVERTISING: Dr. Boyd welcomed the members and explained the workgroup will review the laws, regulations and guidance document on advertising to make suggestions for strengthening the Board's policies and practices.

Dr. Bennett opened the discussion, stating that it appears to him and the members of the Peninsula Dental Society (PDS) that the Board is not concerned about advertising and is not handling complaints in an appropriate manner. He spoke to his personal experiences with filing complaints and his dissatisfaction at the lack of any visible effort by the Board to hold dentists to the law and to educate them about the law. He explained that the PDS Ethics Committee was sending letters of concern about advertising in their area and that there is retaliation occurring. Discussion followed about the increasing competition for patients and a widely held belief that more dentists are pushing the envelope with deceptive advertising. The difficulties associated with a dentist reporting another dentist and with anonymous complaints were addressed.

The need for clear and convincing evidence that an ad is actually false, deceptive or misleading in order for the Board to take disciplinary action was explained and debated. The Board's management of advertising complaints was reviewed noting that:

- investigations are assigned to the D level, the lowest priority, along with all cases solely addressing business practices,
- the executive director is authorized to make probable cause decisions on advertising complaints, and

- confidential advisory letters and confidential consent agreements are frequently used to resolve a case.

Court decisions on commercial speech and the costs of litigating cases were also discussed.

Dr. Boyd then asked the group to focus on what the Board might do to improve the law and regulations on advertising. While reviewing the legal provisions, the discussion included repeated remarks that the Board should be educating licensees about the law and should publish examples of acceptable and unacceptable advertising. It was agreed by consensus that the statute and regulations were not an issue and that a guidance document targeted to dentists should be issued.

Discussion of Guidance Document 60-10 followed. Dr. Link said the Board should stop using confidential options for addressing violations and suggested that Board members should resume the review of these cases. Dr. Dickinson suggested increasing the sanctions. It was agreed by consensus to recommend that the Board amend the guidance document as follows:

- In the section "Making a Probable Cause Decision', item 1, rewrite the last sentence to read "All complaints must provide clear and convincing evidence that a violation occurred."
- In section B. Guidelines for Offering a Confidential Consent Agreement, item 1, limit the offer of a CCA to only a first offense so the sentence would read "The reviewer shall offer a CCA for a first advertising offense."
- In section C. Guidelines for Imposing Disciplinary Sanctions
  - items b.a and b.b, add a reprimand and assess the monetary penalty per violation found.
  - Item b.b increase the monetary penalty to $5,000, require continuing education in ethics and expand the provision to include subsequent offenses.

Discussion returned to anonymous complaints with Dr. Bennett encouraging the Board to look more closely at anonymous complaints to fully investigate the claims being made in advertising.

ADJOURNMENT: Dr. Boyd adjourned the meeting at 12:55 p.m.

Herbert R. Boyd III, Chair

September 13, 2013
Date

Sandra K. Reen, Executive Director

September 13, 2013
Date