VIRGINIA BOARD OF DENTISTRY

AGENDA

September 16-17, 2010
Department of Health Professions
Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center - Henrico, Virginia 23233

PAGE

September 16, 2010

9:00 a.m. **Formal Hearing**

September 17, 2010

9:00 a.m. **Board Meeting**

Call to Order – Dr. Levin, President

Evacuation Announcement – Ms. Reen

Introduction of Board Staff
- Staff Roster

Public Comment

Approval of Minutes
- June 10, 2010 Formal Hearing — P.1-P.3
- June 11, 2010 Board Meeting — P.4-P.10

DHP Director's Report – Dr. Reynolds-Cane

Liaison/Committee Reports
- BHP – Dr. Zimmet
- AADB Report (meeting in Orlando) – Dr. Levin
- SRTA (meeting in Charleston) – Dr. Gokli & Ms. Pace — P.11-P.12
- Regulatory/Legislative Committee – Ms. Howard
- Ad Hoc Advertising Work Group – Dr. Boyd — P.13-P.14

Legislation and Regulation – Ms. Yeatts
- Review of Regulatory Actions

Board Discussion/Action
- Public Comment Topics
- Guidance Document on Delegating to Dental Assistants
- Educational Requirements for Pulp Capping Procedures
- Revision of Guidance Document 60-10 — P15-P.16

Report on Case Activity – Mr. Heaberlin — P.17

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Executive Director's Report/Business – Ms. Reen

- Staff Update
- Budget P.18
- Correspondence with Mr. Pedrotty, SAAG

Board Counsel Report – Mr. Casway

Adjourn

VIRGINIA BOARD OF DENTISTRY
FORMAL HEARINGS
June 10, 2010

TIME AND PLACE: The meeting of the Virginia Board of Dentistry was called to order at 9:25 a.m. on June 10, 2010 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jeffrey Levin, D.D.S.

MEMBERS PRESENT:
Jacqueline G. Pace, R.D.H.
Meera A. Gokli, D.D.S.
Paul N. Zimmet, D.D.S.
Augustus A. Petticolas, Jr., D.D.S.
Myra Howard, Citizen Member
Martha C. Cutright. D.D.S.

MEMBERS EXCUSED:
Herbert R. Boyd, III, D.D.S.
Robert B. Hall, Jr., D.D.S.
Misty Mesimer, R.D.H.

STAFF PRESENT:
Sandra K. Reen., Executive Director
Huong Vu, Administrative Assistant

COUNSEL PRESENT: Howard M. Casway, Senior Assistant Attorney General

OTHERS PRESENT:
James E. Schliessmann, Assistant Attorney General
Gail Ross, Adjudication Specialist
Lynn Taylor, Court Reporter, Farnsworth & Taylor Reporting
Jessica Glajch, Administrative Proceedings Division(APD) Intern
Micheal Bagel, Administrative Proceedings Division(APD) Intern
Tina Jadhaf, Office of Attorney General(OAG) Intern

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

Steven P. Afsahi, D.D.S.
Case No. 126263

Dr. Afsahi appeared with counsel, Herbert Rosenblum, in accordance with a Notice of the Board dated February 11, 2010.

Dr. Levin swore in the witnesses.

Following Mr. Rosenblum's opening statement, Dr. Levin admitted into evidence Respondent's exhibit A through D.

Following Mr. Schliessmann's opening statement, Dr. Levin admitted into evidence Commonwealth's exhibits 1 through 8.

Testifying on behalf of the respondent by phone were Dr. Richard Lee Roth, MD and Dr. Ron Hessamfar, DMD.

Dr. Afsahi testified on his own behalf.

Closed Meeting: Ms. Pace moved that the Board enter into a closed meeting pursuant to §2.2-3711(A)(27) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Dr. Afsahi. Additionally, it was moved that Board staff, Sandra Reen, Huong Vu, Board counsel, Howard Casway, OAG intern, Tina Jadhaf and APD interns Jessica Glajch and Michael Bagel attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and passed.

Reconvene: Ms. Pace moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

The Board reconvened in open session pursuant to § 2.2-3712(D) of the Code.

Mr. Casway asked if either counsel objected to the Board talking to Peggy Wood, the DHP program manager and liaison for the Health Practitioner's Monitoring Program (HPMP), about the program procedures in a closed meeting. No objection was noted.

Closed Meeting: Ms. Pace moved that the Board enter into a closed meeting pursuant to §2.2-3711(A)(27) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Dr. Afsahi. Additionally, it was moved that Board staff, Sandra Reen, Huong Vu, Board counsel, Howard Casway, HPMP liaison, Peggy Wood, OAG intern, Tina Jadhaf, and APD interns, Jessica Glajch and Michael Bagel attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and passed.

Reconvene: Ms. Pace moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

The Board reconvened in open session pursuant to § 2.2-3712(D) of the Code.

Decision: Dr. Levin asked Mr. Casway to report the Findings of Fact, Conclusions of Law and Sanctions adopted by the Board.

Mr. Casway reviewed the findings and conclusions them reported that the Board decided to reinstate Dr. Afsahi's license on indefinite suspension with the suspension stayed contingent upon proof of compliance with the following terms and conditions:

- Dr. Afsahi is to enter into the HPMP and to remain in compliance with said program,
- At such time as Dr. Afsahi is dismissed from HPMP for non-compliance, the stay of his suspension shall be rescinded summarily and his license shall be suspended and he shall be noticed for a formal hearing, and
- Dr. Afsahi shall be prohibited from practicing dentistry unless he is under the supervision of a Board approved licensed practitioner, who shall be immediately present in the facility at all times Dr. Afsahi is treating patients. Dr. Afsahi shall ensure that his Board approved practice supervisor submits such quarterly reports as are required by the Board.

Ms. Pace moved to adopt the Findings of Fact, Conclusions of Law and Sanctions as read by Mr. Casway. The motion was seconded and passed.

ADJOURNMENT: The Board adjourned at 3:25 p.m.

Jeffrey Levin, DDS, President	Sandra K. Reen, Executive Director
Date	Date

VIRGINIA BOARD OF DENTISTRY
MINUTES
June 11, 2010

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:05 A.M. on June 11, 2010 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jeffrey Levin, D.D.S., President

BOARD MEMBERS PRESENT:
Jacqueline G. Pace, R.D.H., Vice President
Robert B. Hall, Jr. D.D.S., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Meera A. Gokli, D.D.S.
Myra Howard, Citizen Member
Augustus A. Petticolas, Jr. D.D.S.
Paul N. Zimmet, D.D.S.

BOARD MEMBER ABSENT: Misty Mesimer, R.D.H.

STAFF PRESENT:
Sandra K. Reen, Executive Director for the Board
Dianne L. Reynold-Cane, M.D., DHP Director
Arnie Owens, DHP Deputy Director
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: With nine members of the Board were present, a quorum was established.

PUBLIC COMMENT: **Terry Dickinson, D.D.S.,** spoke on behalf of Virginia Dental Association regarding concern about Mobile Clinics Regulations. Dr. Dickinson asked the Board to consider adding the name of the dentist that has agreed to provide follow-up care on the patient information sheet.

Dr. Levin stated that the request will be added to the agenda for Board discussion.

APPROVAL OF MINUTES: Dr. Levin asked if the Board members had reviewed the minutes in the agenda package. Dr. Petticolas moved to accept the minutes of the March 11, 2010 meeting. The motion was seconded and carried.

Dr. Boyd asked that the March 12, 2010 minutes be amended on page 6 in response to the VDHA's comments, the first bullet to read "current limitation of 2" instead of "current limitation to 2." Also, on page 8 in Executive Director's report/business, the first bullet to read "application process online license" instead of "application process on license." Ms. Pace moved to accept the minutes of the March 12, 2010 meeting as amended. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

Dr. Levin introduced Dr. Cane, the new DHP Director and Mr. Owens, the DHP Deputy Director.

Dr. Cane thanked the Board for their hard work and said she looks forward to working with the Board. Mr. Owen added that he is happy to be serving at DHP.

SANCTION REFERENCE POINTS (SRP):

Neal Kauder of VisualReseach, Inc. thanked the Board for the opportunity to address SRP. Mr. Kauder stated that DHP has asked that the SRP be evaluated using three criteria:

- Consistency
- Proportionality
- Neutrality

He also said the evaluation should identify potential improvements to the system and recommend changes and that training on the results will be available.

He provided the SRP Agreement Analysis handout and stated that Dentistry's agreement rate through April 1, 2010 was 82% and higher than expected. He went on to show how the Board of Optometry had integrated policies on continuing education in one of its worksheets as an example of changes the Board might consider.

Dr. Zimmet asked Ms. Reen if the Board needed to modify its worksheets. Ms. Reen responded that the CE guidance document was needed whether or not the worksheets were modified then added that any information the Board would like to see when discussing sanctions could be added.

REPORTS:

Board of Health Professions (BHP). Dr. Zimmet reported he attended the May 4, 2010 meeting at which:

- Dr. Kauder reported on the SRP study,
- a report on the need for the Board of Medicine to regulate polysomnographers was accepted, and
- the Board endorsed pursuing the regulation of surgical assistants and surgical technician by the Board of Medicine.

Dr. Cane noted that the review process on regulating surgical assistants and surgical technicians was just beginning.

AADB. Dr. Levin reported that he and Ms. Reen attended the AADB meeting in Chicago in April 2010 where the following issues were discussed:

- How states address the scope of practice of oral surgeons
- State policies on general dentists performing Botox
- Strategies to improve access to care
- Conflict of interest in regard to providers of continuing education

Dr. Levin added that the next meeting will be in October 2010 in Florida.

SRTA. Dr. Gokli reported that she attended the board of directors meeting on June 3, 2010 at VCU where:

- The past president and president-elect were expelled from membership for not acting in the best interest of SRTA
- The request by schools for the exam to be conducted on Saturday and Sunday was denied,
- The request from University of South Carolina to have SRTA and CITA overlap exams was discussed and will be considered further when more information is available, and
- Using plastic teeth in the endodontics section was approved.

Dr. Gokli then asked Ms. Pace to report on the dental hygiene section. Ms. Pace stated that the exam is being given at three new schools and that the new exam is working fine.

LEGISLATION AND REGULATION:

Review of Regulatory Action. Ms. Yeatts reported that the following actions are at the Secretary's office for review of:

- Issuance of the NOIRA for periodic review and reorganization of chapter
- Release of proposed regulations on recovery of disciplinary costs for public comment
- Release of the replacement regulations on the registration of mobile clinics for public comment
- Publication of final regulations for the registration and practice of dental assistants II.

Amend Regulations Consistent with PMP Requirement. Ms. Yeatts stated the amendment to 18 VAC60-20-170 is presented for adoption by the Board as an exempt final action to conform to the provisions of §54.1-2525 for the Prescription Monitoring Program. She said the change provides grounds for disciplinary action for the unauthorized use or disclosure of confidential information received from PMP.

Following discussion, Dr. Zimmet moved to accept the regulation as proposed. The motion was seconded and passed.

Proposed Legislation. Ms. Yeatts stated the proposed legislation is presented for discussion and action from the Board.

Ms. Reen noted that this proposal stems from the work of the Regulatory/Legislative Committee on regulatory review which included agreement that the Board should register practices using moderate sedation, deep sedation and general anesthesia consistent with the practice of most of the other states. She noted that Virginia is one of the four states that do not have registration in place. She added that if the Board wants this legislation to be presented in 2011, it should adopt a proposal now.

Dr. Zimmet moved to advance the legislation as proposed. The motion was seconded and passed.

BOARD DISCUSSION/ACTION:

CRDTS letter from Dr. Cosby. Dr. Levin advised this letter was provided as information only.

DANB Announcement of COPA Exam. Ms. Reen stated this was a communication form DANB in regard to the new exam being offered for Certified Oral Preventive Assistants. She said this exam addresses expanded functions that dental assistant are permitted to perform in other states.

Dental Laboratories. Dr. Levin stated that many states now require dental lab to disclose the materials used in constructing or repairing dental work, whether the work is performed offshore or domestically. The Board currently does not have this requirement in place. He recommended a study to be conducted by the Regulatory/Legislative Committee to look at what other states are requiring of dental lab. All agreed.

Letter from Dr. Bennett. Dr. Levin stated this is an information item. He noted that the Board has addressed previous complaints from Dr. Bennett about advertising and now has a guidance document in place.

Ms. Reen asked for guidance on responding to the complaints from a small number of licensees who are dissatisfied with the Board's management of advertising issues. She reviewed the response about needing evidence that something is actually false, deceptive or misleading and asked what more should be said regarding this issue. The consensus was that the response being given was adequate. Ms. Reen added that the Board could consider amending its guidance document if there is a way to make the rules clearer.

Dr. Boyd stated that he shared Dr. Bennett's concerns regarding advertising as a specialist when the specialty is not recognized by the ADA. Dr. Levin asked Dr. Boyd to review the advertising laws, regulations and guidance document and offer suggestions on how to

revise them. Dr. Boyd agreed and asked if he could work with an ad-hoc committee to include Dr. Bennett. Dr. Levin said he could and Ms. Reen asked to participate.

Dr. Hall asked if Virginia's laws mirror the federal law in regard to advertising. Mr. Casway indicated that the Board's policies are consistent with case law.

Application for Restricted Volunteer License. Dr. Petticolas asked the Board to consider amending the volunteer application, which is seven pages long when the Board of Medicine's is only two pages long. Following discussion, Dr. Levin asked that Dr. Petticolas work with Ms. Reen to review this application and the regulatory requirements and report to the Board at the next meeting. Dr. Petticolas agreed.

REPORT ON REMOTE SUPERVISION OF DENTAL HYGIENISTS:

Dr. Day and Dr. Browder, Virginia Department of Health (VDH) Division of Dental Health – gave a Power Point presentation on the current pilot project which addressed:

- The authorizing statute
- The development and content of the protocol being followed,
- The scope of service, and
- The three health districts in the pilot.

Dr. Day responded to questions about filling the vacancies, difficulties encountered and possible expansion.

REPORT ON CASE ACTIVITY:

Mr. Heaberlin reported on the Board's FY2010 third quarter disciplinary performance on patient care cases noting that the:

- Clearance rate was 109%,
- Case load over 250 business days was 9%, and
- Cases closed within 250 days was 93%.

He went on to report that:

- 93 cases were received from Enforcement in the third quarter and 103 were closed.
- the 103 cases were closed as follows:
  - No Violation/Undetermined – 88 cases
  - Violation / IFC, PHCO, Formal – 12 cases
  - Violation / CCA – 3 cases
- Currently there are 5 cases over 250 days with two pending CCAs, two needing additional information and one at probable cause review.

He then walked Board members through a probable cause review exercise as a refresher for when to request further investigation, administrative proceedings, sanctions and closure.

Dr. Petticolas commented that the exercise was very helpful and he thanked Mr. Heaberlin and Ms. Reen. Dr. Zimmet suggested that the activity should occur annually and there was general agreement.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

Ms. Reen reported the following:

- DHP will soon give all Board members state e-mail accounts. Discussion followed about public records.
- The Board needs to address the educational requirements in the DAII Regs for "performing pulp-capping procedures." She advised that due to a drafting oversight this duty was not considered when the educational requirements were developed. She noted that at the March 12, 2010 meeting that duty was added to those delegable to a DAII but the educational requirements were not addressed. She reported discussing options for developing the requirement with Dr. Levin and Martha Clements, the Director of Continuing Education and Faculty Development at the VCU School of Dentistry and presented two options for discussion:
    1. Deciding that performing pulp capping procedures should be a distinct training module and charge the Regulatory/Legislative Committee with developing the requirements for adoption of proposed language at the September 17th Board meeting or,
    2. Deciding that performing pulp capping procedures is appropriately taught in the module on placing and shaping composite resin restorations and/or the module on amalgam restorations. Also deciding if the number of hours of the module should be adjusted for the inclusion of pulp capping procedures.

  After discussion, Dr. Zimmet moved to accept option number two without an adjustment on the number of hours needed. The motion was seconded and passed.
- The proposed Guidance Document on Delegating to Dental Assistants is near completion and needs to be compared to the ADAA/DANB Alliance's comprehensive dental assisting function list for consistency in terminology and completeness of our document. She asked that one Board member be assigned to work with her on completing work on this guidance document so it can be discussed at the September 17th meeting. Dr. Levin asked Dr. Zimmet to help with this task and he agreed.
- The proposed calendar for 2011 is offered for adoption. She noted that all Board members had an opportunity to note conflicts and no changes were requested. Dr. Zimmet moved to adopt the 2011 calendar. The motion was seconded and passed.
- Teresa Parrish has left the Board and Dr. Cane has approved the recruitment of a Disciplinary Case Manager which is in progress. She added that interviews will be conducted sometime in the middle of July.

- Current expenditures and projections indicate that the Board should be well in the black at the end of this fiscal year. She also noted that the Executive Committee does receive the monthly revenue and expenditure reports.
- Mr. Haddad's letter about the death of a child following dental treatment was provided as information. She added that she has responded to Mr. Haddad and will also let him know that the Board did adopt the draft legislation to require permits for the administration of sedation an anesthesia which will be submitted for gubernatorial review.
- Mr. Bitting's counterpoint to Mr. Haddad's letter was also provided as information.

BOARD COUNSEL REPORT:

Mr. Casway presented Mr. Pedrotty's letter requesting the promulgation or revision of regulations on anesthesia. Following discussion, Ms. Reen was asked to respond to Mr. Pedrotty with a request for an explanation including the identification of the specific policy changes he proposes so the Board might address them.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 1:30 p.m.

Jeffrey Levin, D.D.S., President	Sandra K. Reen, Executive Director
Date	Date

SRTA Dental Hygiene Examination Committee Report

SRTA DHEC met at the Mill's House, Charleston, South Carolina on August 5 & 6, 2010.

In attendance:
Members:

Marlene Fullilove, (TN) Chair	Jan Jolly (AR)
Sherri Williams (SC)	Dina Vaughan (WV)
Jacki Pace (VA)	Dianne Embry (KY)

SRTA Examiners:

Beth Casey (TN)	Mary Ann Burch (KY)
Debbie Southall (VA)	Michelle Bedell, DDS (SC)
Tanya Riffe (SC)	Cindy Johnson (AR)

Educators:

Cherin Pace, UAMS (AR)	Lynn Russell, Concorde Community College (TN)
Barbara Adams, Wallace State (AL)	Deborah Grubbs, Greenville Tech, (SC)
Dr. Cassandra Ballard, UT (TN)	Susan Gorman, TRI-State Comm. College (AL)
Cathy Milejzak, Midlands Tech (SC)	Lynn Austin, Western KY Univ (KY)

I. Educators concerns were addressed:
-Prefer that hygienists examine their students whenever possible
-Elimination of back-up patient
-Returning a method of grading radiographs presented with the patient
-Requiring that the patient be free of plaque, stain, and prophy paste residue
-Administration of anesthesia prior to check-in
-Retaining calculus detection skills as a scored portion of the examination, with a more efficient method of completing the evaluation

II Clarification of SRTA policy – which states that a candidate will automatically fail the examination if they clean teeth other than those assigned. The DHEC would like the BOD to get clarification from the SRTA attorney if there is some legal reason for this policy. If not, the DHEC would like to ask the BOD and / or General Assembly to rescind this policy.

III. Dental Hygiene examiner training workshop- date February 19, 2011 in Atlanta, GA.

IV. Recommended changes for 2011:
Changes recommended for the 2011 testing cycle have little effect on requirements for the candidates. Instead, the DHEC concentrated on improvements in examiner procedures with a goal of making the examination more efficient, shortening the check-in time, and addressing educators concerns.

The General Assembly Session met Saturday, August 7, 2010 - Topics were as follows:
Dr. John Gunsolley, Professor of Periodontics, VCU – Biometrics
Dr. Louis Costa DMD, MD, Southeastern Facial Plastic/Cosmetic Surgery – Facial Aesthetics

The Business Session met on Sunday, August 8, 2010 –
Nine modifications to the exam were recommended and approved as follows:

-Calculus detection
-Assignment of surfaces for calculus removal
-Point system (distribution)
-Periodontal assessment
-Elimination of back-up patient
-Initial case presentation
-Final case presentation
-Assignment of teeth for calculus removal
-Anesthesia

As of this date, the committee has met 3 times via (DHEC) conference calls and daily/weekly e-mails.

Draft - Unapproved

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

Sandra K. Reen, Executive Director

Date

Date

PROPOSED REVISION

Virginia Board of Dentistry

Policy on Sanctioning for
Failure to Comply with Advertising Guidelines

Excerpts of Applicable Law, Regulation and Guidance 18VAC60-20-180 et seq.

- The Board may sanction any licensee for advertisements that are false, deceptive or misleading; contain a claim of superiority or violate regulations, §54.1-2706(7).
- A general dentist who limits his practice shall advertise that he is a general dentist providing only certain services, 18VAC60-20-180.A.
- Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products shall be deemed to be deceptive or misleading, 18VAC60-20-180.B
- Discount offers for dental services shall include the nondiscounted fee and the discounted fee, 18VAC60-20-180.C
- A prerecorded copy of all advertisements on radio or television shall be retained for six-months following the final appearance of the advertisement, 18VAC60-20-180.D
- Advertising of fees is limited to only routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature." 18VAC60-20-180.E
- The following practices shall constitute false, deceptive, or misleading advertising: §54.1-2706(7); 18VAC60-20-180.F
- Publishing an advertisement which contains a material misrepresentation or omission of facts, 18VAC60-20-180.F.1
- Publishing an advertisement that is likely to cause an ordinarily prudent person to be deceived, 18VAC60-20-180.F.2
- Publishing an advertisement which fails to include the information and disclaimers required by this section, 18VAC60-20-180.F.3
- Publishing an advertisement which contains a claim of professional superiority or uses any term to designate a dental specialty to which he is not entitled, 18VAC60-20-180.F.4
- A dentist not entitled to a specialty designation shall not represent that his practice is limited to providing services in a specialty area without disclosing that he is a general dentist, 18VAC60-20-180.F.5
- Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code of Virginia are complied with, 18VAC60-20-180.G
- Confidential Consent Agreements may be used to address advertising guidelines, Guidance Document 60-1.

Making a Probable Cause Decision

~~1.~~ In regards to allegations of false, deceptive and misleading advertisements, the reviewing Board member or staff (the reviewer) shall consider whether evidence exists that the source of the complaint was actually deceived, misled, etc. ~~Anonymous complaints and allegations that something could be a violation generally do not provide~~

PROPOSED REVISION

~~the required clear and convincing evidence that a violation occurred.~~ **All complaints must provide clear and convincing evidence that a violation occurred.**

2. In regards to allegations of claims of superiority and the failure to disclose required information, the reviewer shall not only consider the content of the advertisement but the evidence collected about the development and publication of the advertisement in deciding if there is clear and convincing evidence that the licensee is the responsible party and there is probable cause to believe a violation occurred.

A. Guidelines for sending an Advisory Letter
   1. The reviewer shall only request an Advisory Letter when there is not clear and convincing evidence to support a finding that a violation of law or regulation has occurred.
   2. Advisory letters may be used to close cases when the reviewer is concerned that the presenting information indicates that the licensee may be acting in ignorance of the applicable law and regulations.

B. Guidelines for Offering a Confidential Consent Agreement
   1. The reviewer shall offer a CCA for a first advertising offense ~~and may offer a CCA for subsequent advertising violations~~.
   2. In cases where there are findings of probable cause for violations in addition to advertising, the reviewer may offer a CCA consistent with Guidance Document 60-1.
   3. The offered CCA shall include a finding that a violation occurred and shall request the licensee's agreement to cease and desist advertising in violation of law and regulations.
   4. The offered CCA may also include a requirement for passage of the Virginia Dental Law Exam or completion of a continuing education course in ethics.

C. Guidelines for Imposing Disciplinary Sanctions
   1. The reviewer may offer a Pre-Hearing Consent Order (PHCO) or request an informal fact finding conference when probable cause is found that the licensee has subsequent advertising violations.
   2. The reviewer shall consider the following sanctioning guidelines:
      a. a $1,000 monetary penalty **per violation, a reprimand** and successful completion of the Virginia Dental Law Exam for a second offense.
      b. a ~~$2,000~~ **5,000** monetary penalty **per violation, a reprimand** and continuing education in ethics for a third **and subsequent** offense**s**.
   3. In cases where there are findings of probable cause for violations in addition to advertising the reviewer may offer a PHCO or request an informal fact finding conference.

Disciplinary Board Report for September 16, 2010

This report addresses the three key performance measures for discipline for the fourth quarter of fiscal year 2010 as well as provides some highlights for where the disciplinary cases now stand.

The agency's three key performance measures to be met for disciplinary case processing are as follows:

1. We will achieve a 100% clearance rate of allegations of misconduct by the end of FY 2009 and maintain 100% through the end of FY 2010.
   (Dentistry's Clearance rate for the second quarter is 83%.)
   (Dentistry's Clearance rate for the third quarter is 109%.)
   (Dentistry's Clearance rate for the fourth quarter is 98%.)

2. We will ensure that, by the end of FY 2010, no more than 25% of all open patient care cases are older than 250 business days.
   (Dentistry case load of over 250 business days was 8% for the second quarter.)
   (Dentistry case load of over 250 business days is 9% for the third quarter.)
   (Dentistry case load of over 250 business days is 7% for the fourth quarter.)

3. We will investigate and process 90% of patient care cases within 250 work days.
   (Dentistry closed 97% of its patient care cases within 250 work days during the second quarter.)
   (Dentistry closed 93% of its patient care cases within 250 work days during the third quarter.)
   (Dentistry closed 96% of its patient case cases within 250 work days during the fourth quarter.)

According to the most recent Quarterly Performance Measurement released by the Agency for the quarter ending June 30, 2010, the Board of Dentistry received 137 patient care cases and closed 134. The Board closed 127 cases within 250 business days.

In the third quarter the Board received 65 patient care cases and closed 71 compared with the second quarter where the Board received 155 patient care cases and closed 129.

The Board closed 179 total patient care and non patient care cases in the third quarter ending June 30, 2010.

The 179 cases closed in the second quarter were as follows:

- No Violation/Undetermined – 161 cases (Includes advisory letters for practicing less than 30 days on an expired license.)
- Violation / IFC, PHCO, Formal – 12 cases
- Violation / CCA – 6 cases

Virgina Department of Health Professions
Cash Balance
As of June 30, 2010

	103- Dentistry
Cash Balance as of June 30, 2009	$ 67,361
YTD FY10 Revenue	2,338,945
Less: YTD FY10 Direct and Allocated Expenditures	1,797,977
Cash Transfer (FY10 Caboose Bill - Furlough Day, Suspension of Fringe Benefits, Total 419,673)	31,620
Cash Transfer (FY10 Administration Reduction, Total $636,640)	33,922
Cash Balance as of June 30, 2010	$ 542,786