Approved

VIRGINIA BOARD OF DENTISTRY
MINUTES
December 3, 2010

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:02 a.m. on December 3, 2010 in Board Room 3, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jacqueline G. Pace, R.D.H., President

BOARD MEMBERS PRESENT:
Robert B. Hall, Jr. D.D.S., Vice President
Augustus A. Petticolas, Jr., . D.D.S., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Jeffrey Levin, D.D.S.
Paul N. Zimmet, D.D.S.

BOARD MEMBERS ABSENT:
Meera A. Gokli, D.D.S.
Misty Mesimer, R.D.H.
Myra Howard, Citizen Member

STAFF PRESENT:
Sandra K. Reen, Executive Director for the Board
Arnie Owens, DHP Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant for the Board

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

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

PUBLIC COMMENT: **Michelle Satterlund** with the Virginia Association of Nurse Anesthetists (VANA) spoke in favor of allowing CRNAs to practice in all dental settings regardless of the training of the dentist and in opposition to the contrary position taken by the Virginia Society of Oral Maxillofacial Surgeons (VSOMS). She stated that CRNAs are not required to be supervised in other practice settings and that the standards for CRNA practice should not be different in a dental office.

Dag Zapatero, D.D.S. from Virginia Beach passed out information he collected about dental laboratory services and asked the Board to consider:

- Including Dental Lab Technicians as a regulated profession
- Requiring laboratory registration with annual disclosure of the use of foreign labs
- Requiring each lab to have at least one certified dental technician (CDT)
- Requiring continuing education for lab technicians
- Requiring disclosure of point of origin and materials used
- Imposing penalties for non compliance

Ed Amrhen, D.D.S., President of the Virginia Society of Oral Maxillofacial Surgeons (VSOMS), expressed VSOMS opposition to VANA's proposal to allow CRNAs to work in dental offices without a qualified dentist supervising. He asked to Board to think about the outcome if an adverse reaction occurs and the dentist is not able to intervene. He then asked how many dentists have asked the Board to use CRNAs.

Ms. Reen stated that all public comment topics would be considered later under Board discussion/action.

APPROVAL OF MINUTES:

Ms. Pace asked if the Board members had reviewed the minutes in the agenda package. Dr. Zimmet moved to accept the minutes of the August 5, 2009 and July 10, 2010 Telephone Conference Calls. The motion was seconded and carried.

Dr. Levin moved to accept the minutes of the September 17, 2010 Business minutes and the October 9, 2010 Telephone Conference Call. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

Mr. Owens noted that Dr. Cane could not attend due to a prior commitment. He then reported that:

- The Board Member Orientation on October 27, 2010 was a great success which the Department plans to repeat annually.
- The Governor established six taskforces for the Virginia Health Reform Initiative (VHRI). The six taskforces are:
    1. Medicaid Reform
    2. Insurance Reform
    3. Service Delivery and Payment Reform
    4. Capacity
    5. Technology
    6. Purchasers

These taskforces are coordinating with the Virginia Health Reform Initiative Advisory Council to bring recommendations to the Governor for a comprehensive strategy for implementing health reform in Virginia. The Advisory Council's final meeting for this year will be on December 13-14, 2010.

- The Workforce Data Center has just organized the Dentistry Workforce Advisory Committee to develop the survey which will be conducted in concert with the 2012 license renewal process. He indicated that the data collected should be rolled out about one year from now.
- National Take Back Day by Drug Enforcement Administration (DEA), supported by DHP was very successful. Two and a half tons of controlled substances were collected. DEA plans to repeat this activity in the future.

TRAINING ON SANCTION REFERENCE POINTS (SRP):

Kim Langston, Research Associate for VisualResearch, Inc. provided a training seminar to the Board. She presented a PowerPoint presentation including the following topics:

- The purpose of SRP
- Three worksheets were developed through study sample
- Which worksheet is used when multiple case types exist
- Sanctioning ranges available after a score has been determined
- Departures Reasons
- Cases to exclude
- SRP Agreement Analysis

Dr. Zimmet asked if Pre-Hearing Hearing Consent Orders (PHCO) are included in the statistics. Ms. Langston responded no and Ms. Reen indicated that it would be good to complete the worksheets on PHCOs for inclusion in the data.

ENFORCEMENT UPDATE:

Faye Lemon, Director of Enforcement, introduced herself and Sammy Johnson, Deputy Director of Enforcement to the Board. She gave a PowerPoint presentation on the following:

- Role of Enforcement
- Sources of Complaints

- Complaint Priorities A-D
- Dentistry major case categories
- Typical Investigation

Mr. Johnson added that the Board has done two rounds of audits on the Oral and Maxillofacial Surgeons with cosmetic certification.

Dr. Zimmet thanked Ms. Lemon for improvements made in investigation reports and in obtaining readable x-rays. Ms. Lemon commented that tiering cases and early coordination with Board staff have really helped.

REPORTS:

Board of Health Professions (BHP). Dr. Zimmet indicated the board was scheduled to meet next week so he had no report.

AADB. Dr. Levin said that he, Ms. Pace, Ms. Reen and Mr. Casway attended the AADB annual meeting in Orlando in October 2010 then reported the following topics were addressed:

- The various strategies being developed by states to create and expand mid-level providers
- Live testing for dental licensure is a continuing issue and AADB has appointed a taskforce to look into this issue within the next two years
- Role of continuing education as in establishing continuing competence

He added that during the annual ADA meeting Dr. Terry D. Dickerson, Executive Director of the Virginia Dental Association and the VCU School of Dentistry were recognized.

Ms. Pace stated that the AADB Dental Hygiene Caucus met on October 7, 2010 where ten states were represented. She reported the following:

- the growing interest in the Advanced Dental Hygiene Practitioner model for mid-level providers with support for building upon an established profession rather than creating new ones
- Washington State Dental Association and Connecticut State Dental Association have passed resolutions to support establishing Dental Therapist practitioners in their states
- 29 states are considering legislative changes in the hygiene scope of practice to address access to care issues
- the Minnesota Oral Health Care Practitioner (MSOHCP) model was introduced and it was noted

that its first class is expected to graduate next year(2011).

SRTA. Ms. Pace read a report from Dr. Watkins on the changes made to the Dental Examination which included:

- In the endodontic section, requiring that "the restoration must not encroach upon the access opening."
- Deleting the penalty on one criteria error if stints are not submitted.
- Any form of patient sedation prior to approval will result in failure of and dismissal from the exam.
- Any patient who has received IV, IM or subcutaneous bisphosphonate is not eligible to sit for the exam.
- Penalty verbiage was changed from "may be grounds for dismissal" to "will be grounds for dismissal."
- Defined Class II Composite Slot, and
- The process for managing the general Evaluation Forms generated by the CFC was established.

Ms. Pace added that SRTA will address two items with the educators at a future meeting. The items are not allowing latex sensitive patients and allowing the use of mandibular first premolars. She also noted that the online calibration exam for examiners is now available.

Dentistry Workforce Advisory Committee. Dr. Petticolas reported that the Department of Health Professions Healthcare Workforce Data Center has established the advisory committee for developing surveys for dentistry licensees and that he is serving on the committee. He explained that the Center is collecting data to measure Virginia's healthcare workforce supply and demand. The committee will develop surveys to be completed online during licensure renewal. For the first time, dentists and dental hygienists will be surveyed directly on key issues related to workforce (practice types, locations, hours worked, anticipated retirement). The results will be analyzed and reported annually and will be available to policymakers, researchers, insurers, hospitals, and the general public. Information concerning individuals will remain confidential. The surveys will be developed during FY2011 and implemented during the license renewal process of 2012.

Regulatory/Legislative Committee. Dr. Hall reported that the Committee met yesterday and discussed the VCU School of Dentistry's legislative proposal. Ms. Reen noted that Dr. David C. Sarrett, Dean of the School, would like to address the Board then reported that she had identified some concerns with the proposed language regarding temporary licenses for continuing education, authorizing

licensure when an applicant has failed a clinical examination twice, permitting licensure of someone with no CODA accredited training and allowing the Board to license someone based on its opinion that the applicant is otherwise qualified. Dr. Sarrett then explained the problems with the current law which hinder the School in recruiting qualified foreign trained faculty members. He said the proposed legislation will permit issuance of faculty licenses to individuals who either hold a license in another state or have completed a CODA accredited advanced specialty program but have not completed a CODA accredited DDS or DMD program. Dr. Levin moved that Board staff work with the School to address the identified policy concerns and to offer technical assistance in re-drafting the bill. The motion was seconded and passed.

Dr. Hall stated that the Committee would reconvene its meeting following the Board business meeting.

LEGISLATION AND REGULATION:

Review of Regulatory Action. Ms. Reen reported that the:

- Public comment period on the NOIRA for Periodic Review and Reorganization of the regulations ended and the request for an extension for publication is still pending with the Governor's office.
- Recovery of Disciplinary Costs regs are still pending the Governor's approval for publication for public comment.
- Registration of Mobile Clinics – Ms. Reen reported that these final regulations are at the Governor's office for approval and will not be in place by January 7, 2011. She added that an extension of the emergency regulations has been requested but not yet granted by the Governor.
- Registration and Practice of Dental Assistants – Ms. Reen reported that these regulations are also at the Governor's office. She added that once approved these will be published for 30 days before becoming effective.

BOARD DISCUSSION/ACTION:

Public Comment Topics. Ms. Reen noted that all public comment topics are already on the agenda for discussion.

Letter from Dr. Zapatero, D.D.S. Ms. Reen stated that Dr. Zapatero's letter asks the Board to require dental labs to register to do business for Virginia dentist. Dr. Levin commented that dentists should be held liable for the

materials being used in dental appliances. Dr. Hall added that the Board is pursuing the dental lab form requirement. Ms. Reen noted that the Board currently does not have any statutory authority over the dental labs. The Board only has the authority to prescribe dental lab form. She added that the Board could ask the Board of Health Professions (BHP) to study the need to register dental labs and to certify dental lab technicians to protect patients. Dr. Boyd moved to ask Dr. Carter, the executive director of the BHP, to discuss how a study would be conducted at the next Board meeting. The motion was seconded and passed.

VSOM Letter. Ms. Reen stated that the Regulatory-Legislative Committee will consider the utilization of CRNAs when it addresses the regulations on administering controlled substances as part of the regulatory review process.

Guidance Document on Delegating to Dental Assistants. Ms. Reen stated that she and Dr. Zimmet met to edit the guidance document as requested at the last Board meeting and that it is presented for action. After much discussion the Board made the following changes:

- Expand the section on radiology to include operating an intraoral camera/scanner and taking images for CADCAM restorations.
- Expand the provisions for taking impressions to address opposing models, various guards and trays.
- Delete one of the items addressing placing bands and brackets
- Add taking impressions for orthodontic study models and retainers.

Dr. Hall moved to adopt the guidance document as amended for release when the Dental Assistant II regulations become effective. The motion was seconded and passed.

Volunteer Practice Application. Dr. Petticolas stated that he and Ms. Reen met on October 22, 2010 to review the application and agreed it is too lengthy. They also determined that some of the required documents may already be on file for applicants previously licensed in Virginia. He added that the other application requirements in 18VAC60-20-100 need to be changed before the application can be changed. He asked that the requirements for volunteer practice be reduced in the regulatory review process. All agreed.

He added that in the meantime, the executive director is acting to make the application process less burdensome by

waiving the requirement for original results from National Dental Board Exams for applicants who previously held Virginia dental licenses.

Dental Lab Forms. Dr. Hall presented samples of two dental lab forms, one for the dental lab and one for the dental lab subcontractor. He then referred to the letter from Saunders Dental Laboratory and noted that it was not the intention of the Board to mandate the form but rather to establish the minimum information requirements. Ms. Reen asked if the Board wants to proceed with issuing these forms as a guidance document. The consensus was to return the forms for additional work by the Regulatory-Legislative Committee.

REPORT ON CASE ACTIVITY:

Mr. Heaberlin reported that the Board continues to meet or exceed the key performance measures for discipline cases. He said for the period from June 1, 2010 to August 31, 2010 the Board received 109 cases excluding ones for late renewal. He added that 159 late renewal cases were closed with either a CCA or an advisory letter and that 94 other cases were closed as follow:

- 55 No Violation
- 7 Undetermined
- 15 Violations
- 17 Advisory letters

He also reported that from September 1, 2010 to November 11, 2011 (Q2 FY2011) the Board received 118 cases excluding late renewal cases. He added that 169 late renewal cases were closed with either a CCA or an advisory letter and 114 other cases were closed as follows:

- 82 No Violation
- 11 Undetermined
- 12 Violations
- 2 CCAs
- 7 Advisory letters

He closed by stating that as of November 19, 2010, the Board has 197 open cases and that 44 advertising cases were received from September 1, 2010 to November 19, 2010.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

Ms. Reen reported the following:

- The AADA meeting included an excellent presentation on skills and strategies for negotiating to win. She added that a presentation on the importance of airway management during sedation and anesthesia given

during the AADB meeting was also very informative. She encouraged adding provisions for airway management training in the regulations being developed through regulatory review.

- The Board's financial position is still healthy then said that costs associated with data management by VITA are growing dramatically and may eventually lead to a fee increase. Mr. Owen stated this is an issue that all state agencies are facing and that Dr. Cane and he are acting to control costs and find solutions.
- The North East Regional Board of Dental Examiners (NERB) has notified her that they have misreported Florida examination results as NERB results for 200 candidates who took the Florida exam in 2009 and 2010. Out of these 200 candidates, four (4) were licensed in Virginia based on the erroneous NERB score reports. She added that NERB had yet to inform these candidates of the problem. She asked the Board for guidance for addressing this situation. Mr. Casway advised her to notice these individuals for an informal conference and offer a prehearing consent order for voluntary surrender of their licenses. It was agreed by consensus that Ms. Reen should collect any additional information needed before beginning the disciplinary process and she should work closely with Mr. Casway in developing the notices to be issued to the four licensees.

BOARD COUNSEL REPORT:

Mr. Casway thanked the Board for sending him to the AADB Attorney's Roundtable meeting in October. He noted that it was extremely beneficial to him as the Board's attorney and reported on the discussions that took place on the following subjects:

- Practitioner data banks
- Litigation in AL and NC on teeth whitening.
- Moral turpitude as grounds for initial denial or for imposing discipline.
- Post doctoral training programs.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 1:10 p.m.

Jacqueline R. Pace RDH

Jacqueline G. Pace, R.D.H., President

3-11-11

Date

Sandra K Reen

Sandra K. Reen, Executive Director

March 11, 2011

Date