

**VIRGINIA BOARD OF DENTISTRY  
MINUTES  
MARCH 11, 2011**

**TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:04 a.m. on March 11, 2011 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.  
Meera A. Gokli, D.D.S.  
Myra Howard, Citizen Member  
Jeffrey Levin, D.D.S.  
Misty Mesimer, R.D.H.  
Paul N. Zimmet, D.D.S.

**BOARD MEMBERS  
ABSENT:**

None

**STAFF PRESENT:**

Sandra K. Reen, Executive Director for the Board  
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 all members of the Board present, a quorum was established.

**PUBLIC COMMENT:**

**Graham Garner, D.D.S.**, Chairman of the Virginia Dental Association (VDA) Ethics Committee asked the Board for clear and concise regulations regarding advertising for the dental profession. He stated that VDA Ethics Committee has had a surprising amount of complaints about advertising by dentists in the Commonwealth over the past several years. Dr. Garner stated that the Ethics Committee has few options when resolving complaints regarding advertising. He added that there is evidence of dentists claiming they are superior to other dentists or to be specialists when they are not. He asked that the Board, in working on the periodic review of the regulations, help to protect the public and to

hold members of the dental profession to high ethical principals in advertising.

**William J Bennett, D.D.S.**, from Williamsburg, Virginia, noted that he was here about a year ago commenting before the board and that he was also a member of the Ad Hoc Advertising Workgroup. He expressed that there are still improper claims of superiority from dentists especially in area phone books. He added that the Board is in the position to do something about improper advertising since it is working on the periodic review of the regulations. He asked the Board not to lower the advertising standards.

**Ron Tankersley, D.D.S.**, Oral and Maxillofacial Surgeon from Newport News, anesthesia teacher at VCU School of Dentistry, past American Dental Association President. Dr. Tankersley opined that the periodic review of regulations should consider the unique environment in which dentists practice and to retain the autonomy of dentistry in anesthesia. He added that he is pleased with the proposed regulations regarding anesthesia.

**Ed Amrhen, D.D.S.**, President of the Virginia Society of Oral Maxillofacial Surgeons (VSOMS) expressed the view that VSOMS supports the proposed regulations.

**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 December 2, 2010 Formal hearing, December 3, 2010 Business meeting, January 5, 2011 Telephone Conference Calls and January 28, 2011 Formal hearing. The motion was seconded and carried.

**DHP DIRECTOR'S REPORT:**

Ms. Reen noted that Dr. Cane and Mr. Owen are unable to be at the meeting today.

**EVAUATING THE NEED TO REGULATE A HEALTH PROFESSION AND THE HEALTHCARE WORKFORCE DATA CENTER'S DENTISTRY ADVISORY COMMITTEE:**

**Elizabeth Carter, Ph.D.**, Executive Director, Board of Health Professions (BHP) and Director, Healthcare Workforce Data Center, presented a PowerPoint overview of BHP:

- What BHP is;

- Its authority;
- Its members and their role;
- Major policy reviews and other activities; and
- How its work is accomplished.

Dr. Carter stated that dental lab technicians are regulated by Department of Health (VDH) and the FDA is supposed to be spot checking dental labs. She added that what enters the country, including dental lab materials, is under federal law.

## REPORTS:

**Board of Health Professions (BHP).** Dr. Zimmet stated that Dr. Carter's presentation served in lieu of his own.

**AADB.** Dr. Levin said that he will attend the AADB Mid-Year meeting in Chicago in April 2011. He then reported the following topics about AADB:

- AADB is composed of all state boards dealing primarily with licensure issues;
- Main issue is the clinical dental exam (live patient vs. simulation). The consensus from the candidates is that simulation is more difficult than the live patient for the Board exam;
- VCU Dental School is recognized as a leader in dental simulation; and
- States that have independent funding are able to send a contingent of representatives to the meetings with each person getting to vote on AADB issues.

Dr. Gokli moved to allow Dr. Levin on behalf of the Board to request the AADB to consider one vote – one state. The motion was seconded and carried.

**SRTA.** Dr. Gokli reported the following:

- New President of SRTA is Bob Jolly from Arkansas;
- The Exam Committee has two new members from TN and WV;
- SRTA's financials are in the black ;
- SRTA is still concerned with unusual number of tooth fractures in the PIE I exam;
- There were 11 failures at the VCU exam on March 5, 2011, which is similar to the recent exam at the University of South Carolina;
- SRTA will conduct an on-line teleconference with Board of Directors meeting in April 2011; and
- Kathleen White, Executive Director of SRTA, is resigning due to health problems.

Ms. Pace reported that she attended SRTA Dental Hygiene SAC/CFC training in Charlotte, NC on February 19, 2011 to discuss 2011 changes. She added that the first dental hygiene exam was given last week and the only problem was with PDAs. She also stated that SRTA is trying to cut check-in time.

**SCDDE.** Dr. Boyd reported that he attended the SCDDE meeting in Charleston, SC on January 29-30, 2011 and the following topics were included in his report:

- Dr. Patrick Lloyd, Dean of the School of Dentistry at University of Minnesota discussed "*Dental Therapy: The Minnesota Story: Non-patient Based Licensure Examination: The Minnesota-Canadian Nexus*;"
- Dr. Charles H. Norman, the ADA 16<sup>th</sup> District Trustee presented a discussion on "*ADA Activities Regarding Clinical Licensure Examinations and Workforce Issues*;"
- Dr. James Rivers from the Department of Oral Rehabilitation of the Medical University of SC (MUSC) discussed "*Progressive Competency*" which is how MUSC grades and evaluates their students;
- Dr. Walter G. Renne from the Department of Oral Rehabilitation of the MUSC discussed "*Cad/Cam Technology*"; and
- Dr. Greg Vance of SRTA, Dr. Guy Champaine of NERB, Dr. Stan Hardesty and Dr. Delma Kinlow of CITA and Dr. John Cosby of CRDTS discussed what each of their regional testing agencies are doing and how they are developing their examinations to ensure competency and fairness in their respective examination processes.

**Regulatory/Legislative Committee.** Dr. Boyd reported that the Committee met on February 10 and March 10, 2011. He added that most Board members attended the latter meeting. He went on to say that changes were made to the draft Regulations and will be reviewed again at the next committee meeting. He hoped to have the final proposed draft at the June 3, 2011 business meeting for Board members to vote on. He noted the following changes were made in the discussion draft of the dental chapter:

- Education requirement includes clinical component (no longer live patient required and delete "regional");
- How to define a Bona fide patient-dentist relationship;
- Pediatric patients 12 years old and younger cannot take a sedating medication until he/she arrives at the dental office, no exceptions;

- Registered nurse can administer drugs under minimum and moderate sedation but not deep sedation; and
- Equipment such as precordial stethoscope were added to be used in sedation.

Dr. Boyd stated that the next Regulatory-Legislative Committee meeting will be on either April 22 or April 29, 2011.

## **LEGISLATION AND REGULATION:**

**Report on Legislation Related to Dentistry.** Ms. Reen reported the following:

HB1642 (Dental school faculty; licensure) – the bill passed the House but was withdrawn in the Senate at the patron's request;

HB2255 (Disclosure of health records; health care providers who dispense controlled substances) – dental professions need to be aware of this bill so they will know they can share Prescription Monitoring Program patient information with other treating providers;

SB1014 (Dental hygienists; extension of educational and preventive care protocol) – this program is under VDH and has been extended for another year; and

SB1146 (Dentists; sedation and anesthesia permits) – the bill was passed with an emergency enactment clause which requires the regulations be effective within 280 days after the Governor signs the Bill. Ms. Reen added that staff has begun drafting the regs.

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

- Periodic Review and reorganization of the regulations continue as a work progress;
- Recovery of Disciplinary Costs regs – comment period ended on March 4, 2010 and only two comments were received. The Board will adopt the final regulations at its June meeting;
- Registration of Mobile Clinics – comment period ended on March 4, 2011 and no comment was received. The Board will adopt the final regulations at its June meeting; and
- Registration and Practice of Dental Assistants – these regs are in full force since March 2, 2011.

**Amend Radiation Certification Regulations.** Ms. Reen requested the Board action to resolve a long term problem with the regulation on radiation certification which the Board has no statutory authority to oversee or enforce. Dr. Zimmet moved to adopt a proposed exempt regulatory action to

Dr. Zimmet moved to authorize Ms. Reen to work with the Department of Health in drafting a notification letter to the institutions that received approval from the Board to offer a radiation course. The motion was seconded and passed.

By consensus, the Board agreed to allow dental assistants who hold a certificate of having completed a Board approved radiation course to continue taking x-rays. The institutions can no longer say they offer a Board approved program.

## **BOARD**

### **DISCUSSION/ACTION:**

**Public Comment Topics.** Dr. Boyd stated that he was a member of the Ad Hoc Advertising Committee and that no changes in the regulations regarding advertising were recommended by the committee.

**FAQ from the Committee for an Integrated Examination.** Ms. Reen stated that this is provided as information only.

**Amendment of Educational Requirements for DAs II.** Ms. Reen stated that since the Regulations for DAs II did not go into effect until March 2, 2011, it was possible to bring this matter back to the Board for action rather than convene the Executive Committee. Dr. Levin moved to amend the DA II regulations' educational requirements to include pulp capping procedures. The motion was seconded and passed.

**Adoption of Guidance for Educational Programs for Dental Assistants II.** Dr. Levin moved to adopt the guidance document. The motion was seconded and passed.

**University of Florida Request for Teleradiology Consults.** Ms. Reen stated that this was a request to read teleradiology from VA dentists. By consensus, the Board stated that radiologists must have a Virginia license in order to read x-rays taken of patients in Virginia. Ms. Reen added that Dr. Levin is the chairman of the Technology Committee. He will be working with Mr. Heaberlin to conduct research on this issue and to develop a guidance document for the Board's consideration.

**Drawing Blood for PRP Preparation.** The Board discussed the issue of dentists who draw blood to incorporate Platelet Rich Plasma in grafting protocols and whether this procedure is within the scope of practice in Virginia. Dr. Levin moved to request that the Ad Hoc Technology Committee draft a guidance document.

**REPORT ON CASE  
ACTIVITY:**

Mr. Heaberlin reported that the Board continues to meet or exceed the key performance measures for discipline cases. In Q1FY2011, the Board's case clearance rate was 122%. The pending caseload older than 250 days was 10% and the cases closed within 250 business days was 96%.

He also reported that from November 1, 2010 to February 28, 2011 (the second two months of Q2 FY2011 and the first two months for the Q3 FY2011) the Board received 154 cases which were closed as follows:

- 121 No Violation
- 33 Violations

He added that the Board currently has 217 open cases of which 15 cases are over 250 business days. He closed by asking Board members to complete and to return probable cause cases as soon as possible if they still have them.

**EXECUTIVE  
DIRECTOR'S  
REPORT/BUSINESS:**

Ms. Reen reported the following:

- DANB has sent a request for feedback from the Board on the pilot study DANB's Board of Directors is considering performing. She asked the Board to respond in favor of the study. Dr. Zimmet moved to accept Ms. Reen's recommendation. The motion was seconded and passed.
- WREB has announced the finalization of the Dental Hygiene Process of Care examination (POC). This is provided as information. Ms. Reen asked if the Board wants to have a WREB representative to be here at the next meeting or just a written report about this. All agreed that a written report is sufficient.
- Four Florida cases of NERB who were incorrectly given VA license are still opened. To Ms. Reen's knowledge, NERB has not contacted those licensees.
- The Board's financial position is still healthy, but monthly cashflow is negative at certain times. Dr. Cane has issued the following moratorium in regard to cash flow:
  - No new hires;
  - No pay increase;
  - No temporary workers – does not apply to expert contract:

- No temporary workers – does not apply to expert contract:
- Consider paperless licenses with no expiration date – most current information is already on DHP website; and
- Less Overnight travel – to schedule meetings in the afternoon versus in the morning.

After much discussion, the Board agreed to ask the Regulatory-Legislative Committee to review taking the posting of licenses requirement out the regulations due to current technology. The Board further considered no longer issuing yearly paper licenses and instead a one-time wall certificate that would include license information. X-ray certificates still need to be posted because x-ray machines are regulated by VDH. The Board agreed to keep the current meeting times due to long distance travel time for many Board members

Ms. Reen noted that she will be out on leave for about two to three months due to knee surgery. Mr. Heaberlin will be the Acting Executive Director in her absence.

**Credentials Committee  
Recommendation:**

**Case # 135116**

**Closed Meeting:**

Dr, Hall moved that the Board convene a closed meeting pursuant to § 2.2-3711.A (28) of the Code of Virginia for the purpose of consideration and discussion of a recommended decision from the Credentials Committee. Additionally, Dr. Hall moved that Board staff, Sandra Reen, Alan Heaberlin, Huong Vu, and board counsel, Howard Casway, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

**Reconvene:**

Dr. Hall 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.

Dr. Zimmet moved to accept the recommended Order of the Credentials Committee. The motion was seconded and carried.

**BOARD COUNSEL  
REPORT:**

JUN 17 2011  
DHP

Mr. Casway said he had nothing to report.

Mr. Casway was asked if DHP could collect the \$50 per diem for examiners and credit the money to the Board even though the examiners cannot be paid a per diem. Mr. Casway responded no because, in accordance with the Appropriations Act, a per diem payment is not authorized.

In response to a question Mr. Casway advised that board member liability arising out of activities related to the SRTA licensure examination, so long as the examiner/member is acting consistent with his/her duties as a board member, he will be represented by the OAG. If the alleged harm arises, however, out of the performance of a dental procedure, the member's malpractice policy would likely be the primary source of defense. With respect to liability for other board related activities, if discipline-related, the board member is entitled to absolute immunity absent malice or fraud. For other activities, so long as the board member follows the advice of counsel, the Attorney General will defend. If the board member does not follow the advice of counsel, future representation by the OAG will depend on the issues and facts surrounding the action.

**ADJOURNMENT:**

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

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

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Sandra K. Reen, Executive Director

  
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Date

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Date