Approved

VIRGINIA BOARD OF DENTISTRY
MINUTES
MARCH 8, 2013

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:03 a.m. on March 8, 2013, in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

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

BOARD MEMBERS PRESENT:

Martha C. Cutright, D.D.S.
Surya P. Dhakar, D.D.S.
Charles E. Gaskins, III, D.D.S.
Myra Howard, Citizen Member
Jeffrey Levin, D.D.S.
Melanie C. Swain, R.D.H.
Tammy K. Swecker, R.D.H.
James D. Watkins, D.D.S.

BOARD MEMBERS ABSENT: Evelyn M. Rolon, D.M.D.

STAFF PRESENT:

Sandra K. Reen, Executive Director for the Board
Dianne L. Reynolds-Cane, M.D., DHP Director
Elaine J. Yeatts, DHP Senior Policy Analyst
Kelley Palmatier, Deputy Executive Director for the Board
Huong Vu, Operations Manager for the Board

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

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

PUBLIC COMMENT: **None**

APPROVAL OF MINUTES:

Dr. Boyd asked if the Board members had reviewed the December 6, 2012 Formal Hearing minutes. Dr. Watkins moved to accept the minutes. The motion was seconded and carried.

Dr. Boyd asked if the Board members had reviewed the December 7, 2012 Business minutes. Dr. Gaskins noted that in the section addressing 18VAC60-20-107 the one vote "against" should be change to "*abstaining.*" By consensus, the Board agreed. Dr.

Gaskins moved to accept the minutes as amended. The motion was seconded and carried.

Dr. Boyd asked if the Board members had reviewed the January 16, 2013 and February 14, 2013 Telephone Conference Call minutes. Dr. Gaskins moved to accept these minutes. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

Dr. Cane reported that three (3) agency bills were passed this year:

- HB 1791on suspension of license, registration or certificate by a health regulatory agency.
- HB 2136 on adding methasterone and prostanozol to the Schedule III controlled substances list.
- SB 950 on updating terminology of practice of medicine and other healing arts.

Dr. Cane added that she plans to attend the National Governors Association Conference next week to discuss reducing prescription drug abuse. She stated that the four areas on the agenda are monitoring, education training, disposal, and enforcement. She noted that DHP was the lead in the plan, and Virginia was granted $45,000 for this project.

LIAISON/COMMITTEE REPORTS:

Board of Health Professions (BHP). Dr. Levin stated that no meeting has been held since his last report.

AADB. Dr. Levin stated that the Mid-Year meeting is being held in April 2013, and the Board plans to send a representative.

ADEX. Dr. Cutright stated that the draft ADEX report is in the agenda package. She noted that Virginia was inadvertently omitted in the listing of attendees, but the final report will reflect her attendance.

SRTA. Dr. Watkins reported that SRTA's experience with transitioning to the ADEX exam format is favorable.

Examination Committee. Dr. Cutright noted that the Committee did not meet yesterday but will meet today after the business meeting.

Executive Committee. Dr. Boyd reported that the Committee met yesterday to revise the current Bylaws, which are presented for Board consideration and action. Dr. Levin moved to accept the amended Bylaws. The motion was seconded and passed.

LEGISLATION AND REGULATIONS:

Report of 2013 General Assembly. Ms. Yeatts reported the following bills were passed:

- HB 1349 on definition and licensure of dental hygiene and dental hygienist
- HB 1422 on requirements for pharmacists to dispense interchangeable biosimilar biological products.

Status Report on Regulatory Actions. Ms. Yeatts reported the following:

- Sedation and Anesthesia permits for dentists - The proposed final regulations are at the Department of Planning and Budget for review. The emergency regulations will expire on September 13, 2013. The Board may need to request a six-month extension at the next meeting.
- Periodic Review – The proposed regulations to establish four chapters have been at the Secretary's Office for 277 days.

Correction of a Code citation and a term. Ms. Yeatts stated that this is presented for Board action because the Code referenced in 18VAC60-20-220(B) should be "54.1-2722," and the term used in 18VAC60-20-220(D) should be "dental."

Dr. Levin moved to adopt the amendments as presented, as an action exempt from the Administrative Process Act requirements. The motion was seconded and passed.

Response to Petition for Rulemaking from AADH. Ms. Yeatts stated that the petition to be added to the list of approved CE sponsors, submitted by the American Academy of Dental Hygiene (AADH), is presented for Board action.

She added that, if the Board accepts the petition, she recommends using the fast-track action regulatory process. She noted that if the Board rejects the petition, it must state its reason for denial.

Ms. Swecker moved to accept the AADH petition and to take fast-track action to amend the regulation. The motion was seconded and passed.

BOARD DISCUSSION/ACTION:

Review of Public Comment Topics. Ms. Reen noted that there were written comments to consider.

Ms. Reen stated that Joy Sylvester-Johnson, Rescue Mission CEO, requests that the Board undertake a legislative initiative for

establishing a provisional license for international dentists who are not licensed in Virginia to practice in free clinic and community health center operations under the mentorship of a certified dentist. Dr. Gaskins moved to reject the proposed request. The motion was seconded and passed.

Ms. Reen advised the Board to defer discussion of Dr. Griffin's concern about the EKG requirement until the public comment period for the proposed final regulations is closed.

Ms. Reen stated that the comment from Mr. Price is provided to make the Board aware that he is asking his state representatives to address his concerns about the work of the Board.

Ms. Reen stated that she is requesting guidance on the response to be given to Dr. Dameron, who asks if he is required to have both a laryngeal mask airway and a laryngoscope as stated in 18VAC60-20-120.I.3 of the Emergency Regulations for Sedation and Anesthesia permits. Dr. Levin suggested that both should be required, and the Board agreed by consensus.

CITA Exam. Dr. Watkins stated that NC Board only accepts the CITA exam, while VA accepts all regional clinical exams. He added that VA graduates cannot be licensed in NC if they do not take the CITA exam. He noted that it is unfair for graduates who live near the adjoining border and asked the Board to request that the NC Board address this inequity.

Ms. Reen commented that the Board sent this request to the NC Board about a year ago, and no response has been received. Dr. Watkins asked if the Board should send another letter to NC Board. Dr. Boyd referred this matter to the Examination Committee for further discussion.

REPORT ON CASE ACTIVITY:

Ms. Palmatier reported that in the second quarter of FY2013 the Board received a total of 77 patient care cases and closed a total of 60 for a 78% clearance rate. She added that the current caseload older than 250 days is 25%, and 90% of all cases were closed within 250 business days. She advised that the Board did not meet the agency's performance goals. She added that for the month of December 2012, the Board received 28 cases and closed 42, mostly as a result of the "blitz" that we had on December 6, 2012. She hoped that the Board members will continue with case review on dates when administrative hearings are scheduled until the board no longer has a backlog.

BOARD COUNSEL REPORT:

Mr. Casway stated that he has nothing to report.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

Sanctioning for Billing Practice Violations. Ms. Reen stated that the Policy on Sanctioning for Failure to Comply with Insurance and Billing Practices is presented for Board consideration and action. This policy is developed as a Guidance Document through which the Board delegates to its executive director the authority to make decisions on cases with only billing issues. She added that the proposal is consistent with the guidance documents on advertising and continuing education. Discussion followed about reporting fraudulent activity to the police for criminal prosecution. It was noted that the Enforcement Division does coordinate investigations with law enforcement agencies.

Dr. Gaskins moved to adopt the guidance document. The motion was seconded and passed.

Board minutes. Ms. Reen asked the Board and Mr. Casway for guidance on keeping the minutes since board members have questions about the minutes. She reported that the requirements specified in the Freedom of Information Act are:

- Date, time, and location of meeting;
- Members of the public body recorded as present and absent;
- Summary of the discussion on matters proposed, deliberated or decided; and
- A record of any votes taken.

It was asked if the minutes should record who asked questions or made comments in the meeting. Mr. Casway said it is not necessary to state who said what, but the minutes should be a summary of the matters discussed. Ms. Reen said she would work to reduce the number of references to specific individuals and to be more concise. By consensus, the Board decided to keep minutes consistent with current practices.

Dr. Dhakar asked if it is permissible to vote against the decision reached in closed session when a special conference committee returns to open session. Mr. Casway responded that it is and that the minutes would need to reflect the number of yes votes and no votes.

APPLICATIONS FOR ENTERAL COUSCIOUS/SEDATION PERMITS:

Dr. Boyd announced that the Board met in closed session yesterday to receive legal advice on these applications. He read the adopted motion and then asked if anyone wanted to discuss this subject further. By consensus, the Board affirmed its motion and decided that no further discussion was needed.

CASE RECOMMENDATIONS: **Case# 146265**

Closed Meeting:

Dr. Levin moved that the Board convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* for the purpose of deliberation to reach decisions in the matters of Case # 146265. Additionally, Dr. Levin moved that Board staff, Ms. Reen, Ms. Vu, and Ms. Palmatier and Mr. Casway, Board Counsel, attend the closed meeting because their presence in the closed meeting is deemed necessary and will aid the Board in its deliberations.

Reconvene:

Dr. Levin moved that the Board certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and passed.

Ms. Howard moved to accept the recommended Order of the Credentials Committee for Case # 146265. The motion was seconded and passed.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 11:15 a.m.

Herbert R. Boyd, III, D.D.S., President

Date September 13, 2013

Sandra K. Reen, Executive Director

Date September 13, 2013