

**MINUTES
TENNESSEE BOARD OF DENTISTRY**

Date: September 13 and 14, 2007

Location: Tennessee Department of Health
227 French Landing, Iris Room
Heritage Place Metro Center
Nashville, TN 37243

Members Present: Jeffrey M. Clark, D. D. S., President
Michael P. Tabor, D. D. S., Vice President
John M. Douglass, D. D. S., Secretary/Treasurer
Ruth E. Bailey, D. D. S.
Beth A. Casey, R.D.H.
Katherine H. Cherry, R.D.H.
Betty Gail Fox, R.D.A.
Lawrence Hsia, D.M.D.
Randall P. Prince, D. D.S.
James L. Smith, D.D. S.
Agnes S. Young, Consumer Member

Staff Present: Dea Smith, Executive Director
Sheila Bush, Board Manager
Ernie Sykes, Advisory Attorney
Juanita Stone, Disciplinary Coordinator
Jerry Kosten, Rule Coordinator

Dr. Jeffrey Clark, President, called the meeting to order at 9:13 a.m. Dr. Clark determined that a quorum was present in order to conduct Board business.

Conflict of Interest

Mr. Ernie Sykes reminded the Board members about the conflict of interest statement that they have all signed, explaining that if there is a conflict with any of the cases presented to the Board that they must acknowledge it and then decide if it would in anyway cause them to not to be able to make an unbiased decision concerning the case.

Minutes

Dr. Randall Prince made a motion to accept the minutes from the May 24 and 25, 2007 meeting as presented. Dr. Michael Tabor seconded the motion. The motion carried.

Financial Report

Dr. John Douglass gave the financial report. Dr. Douglass stated that he has spoken with Rosemary Otto, Executive Director of the Tennessee Medical Board and Libby Lund, Executive Director for the Tennessee Board of Nursing about raising the per diem rates for board members. The Medical Board has submitted a request to raise their per diem from \$150.00 to \$250.00 through a government package. The Board decided to ask the Tennessee Dental Association to introduce legislation to increase the per diem for the Board of Dentistry from \$100.00 to \$250.00.

Executive Director's Report

Ms. Dea Smith, Executive Director, informed the Board that there are 3,426 Dentists, 3,676 Dental Hygienists and 5, 529 Registered Dental Assistants as of August 31, 2007. Ms. Smith also informed the Board of the cheating scandal that occurred at the dental schools at the University of Las Vegas, New Jersey School of Medicine and Dentistry and Indiana University.

Office of General Counsel Report

Mr. Sykes informed the Board that there are 69 open cases currently in the Office of General Counsel. Mr. Sykes also informed the Board of the 2007 Legislation which consist of Public Chapters 83-Reporting Suspected Domestic Violence, 182- Criminal Activity Reporting, giving Tennessee Department of Health, Health Related Boards the option of using a different vendor for criminal background checks, 196- All Health Related Boards adding a date in the final order for when civil penalties must be due, 340- revises T.C.A. 63-5-107 (c) 1, concerning continuing education hours being reduced from fifteen (15) hours to twelve (12) hours annually and requiring registered dental assistants to complete continuing education, 410- Non-Smoker Protection Act, 446- Regulatory Flexibility Act of 2007 which concerns the rulemaking hearing process and the economic impact that the rule changes may have on small business and 529- Employers hiring illegal immigrants.

Mr. Sykes presented to the Board a policy concerning criminal background checks and what should be done if the fingerprints are rejected twice by the Federal Bureau of Investigation. After discussion, Dr. Prince made a motion to adopt the policy stating that Board shall require the applicant to submit to a TBI/FBI fingerprint scan through the State of Tennessee's approved vendor or its equivalent as determined by the board or its equivalent in the state in which the applicant is located. Ms. Casey seconded the motion. The motion carried.

Investigation Report

Ms. Juanita Stone, Disciplinary Coordinator, gave the report. There are 113 open cases for dentists, 3 for dental hygienists and 6 for dental assistants in the Office of Investigation.

Disciplinary Report

Ms. Stone gave the disciplinary report and explained about the cases currently being monitored by the Office of Investigation. Ms. Stone cannot inform the Board if the individuals that are being monitored are in compliance or not.

Correspondence from National Associations

Ms. Smith asked the Board if they would like to elect a liaison for the American Association of Dental Examiners (AADE). After discussion, Dr. Douglass nominated Beth Casey to be the Board's liaison to the AADE. Dr. Ruth Bailey seconded the motion. The motion carried.

The Board reviewed correspondence from the American Dental Association, the American Association of Dental Examiners, Academy of General Dentistry, the American Dental Hygienists' Association and the Commission on dental Accreditation. No action was taken on any of these.

Correspondence

Ms. Smith presented correspondence from Dr. Ben Spaulding. The Board decided to send Dr. Spaulding a response to his correspondence acknowledging receipt.

Newsletter

Dr. Tabor wanted the Board to be more proactive in helping with the Board's newsletter by writing articles and/or giving advice on how articles should be submitted in the newsletter. Dr. Prince volunteered to help out with the newsletter as the Editor. The Board approved Dr. Prince to be the editor of the Board's newsletter and for him to work closely with Ms. Smith concerning the newsletter. Ms. Casey wanted to thank Ms. Smith for all her hard work that she has done in putting the newsletter together. Dr. Prince wanted to know if we can put more information concerning the disciplinary actions taken against licensee in the newsletter. Mr. Sykes will research the possibility of putting more or less information concerning disciplinary actions in the newsletter.

Clinical Issues Committee

The Clinical Issues Committee met on September 12, 2007 to discuss the use of diode lasers by dental hygienists, derma fillers, and the coronal polishing exam. Dr. Prince recommended that the Board should allow the use of diode laser by dental hygienists. After discussion, Dr. Prince made a motion to authorize a rulemaking hearing to delete Board rule 0460-3-.09 (6) (k) which prohibits "Utilization of laser equipment and technology in the course of the performance of their duties unless specifically authorized by T.C.A. 63-5-108 (b) and rule 0460-3-.09 (1). Only dentists licensed by the Tennessee Board of Dentistry shall be authorized to perform procedures involving laser technology." Dr. Tabor seconded the motion. The motion carried with Ms. Cherry voting in the negative.

The Committee reviewed the Board's policy on Botox and decided to ask that the Board deleted from the policy "and/or similar cosmetic products". After discussion, Dr. Prince made a motion that the Botox policy read "It is the position of the Tennessee Board of Dentistry that the use of botox falls outside the scope of practice for Tennessee dentists except for those dentists who possess documented cosmetic training in accordance with the board rule 0460-2-.06 (8)" and to authorize a rulemaking hearing to allow dentists the use of derma fillers by credentials and/or education. Dr. Tabor seconded the motion. The motion carried with Ms. Casey abstaining and Ms. Fox voting in the negative.

The Committee also reviewed the coronal polishing examination given by Board members twice a year. The Committee wants to have the request submitted as legislation to remove the clinical and didactic examination for coronal polishing from the Board's statutes and to remove the one (1) year waiting period before a registered dental assistant may take the coronal polishing course. After discussion, Dr. Prince made a motion to ask the Tennessee Dental Association to present legislation to remove the requirement for clinical and didactic examination for coronal polishing by the Board from the board's statute. Dr. Bailey seconded the motion. The motion carried. Dr. Bailey made a motion to remove the one (1) year waiting period before a registered dental assistant may take a coronal polishing course from the rules. Ms. Cherry seconded the motion. The motion carried with Ms. Fox voting in the negative.

Correspondence from National and Regional Testing Agencies

Mr. Sykes informed the Board that Southern Regional Testing Agency (SRTA) submitted a contract to the Board asking that a contract be signed by the Tennessee Board of Dentistry. The Board of Dentistry cannot enter into a contract with SRTA since it is not the only examination accepted by the Board for licensure by examination. Ms. Smith will draft a letter explaining the situation to SRTA and Mr. Sykes will review.

Continuing Education Committee

Ms. Casey informed the Board of the Committee's recommendations for licensee that were not in compliance with the continuing education audit for the 2003/2004 calendar year. Licensees not in compliance will be required to pay a penalty and make up the hours and/or CPR certification that were deficient. Ms. Casey made a motion to accept the policy as written. Dr. Tabor seconded the motion. The motion carried.

Order of Modification

Dr. Edward B. Elkins, D.D.S. represented by Mr. Robert T. Carter, Attorney, came before the Board requesting that the Board send a letter to the Drug Enforcement Agency (DEA) stating that the Board has no objection to Dr. Elkins reapplying for his DEA license and to request that the Board relieve him of a portion of the fine in the original order. After discussion, Ms. Casey made a motion to formulate a letter to the DEA stating that the Board has no objection to Dr. Elkins reapplying for his DEA license. Dr. Fox seconded the motion. The motion carried with Dr. Bailey, Dr. Tabor and Dr. Hsia voting in the negative. Dr. Smith wanted it stated in the

minutes that Dr. Elkins informed the Board that he will not have any controlled substances in his office. Dr. Douglass made the motion to extend Dr. Elkins deadline to pay his fines until May 31, 2008. Ms. Casey seconded the motion. A roll call was taken. All voted in the affirmative.

Order of Compliance

Dr. Albert P. Thompson Jr. came before the Board requesting an order of compliance to lift his probation. Mr. Sykes explained to the Board that Dr. Thompson's probation doesn't end until September 28, 2007 but because the Board won't meet again until January 10 and 11, 2007, he would like to request the order of compliance to lift his probation at this meeting. Mr. Sykes stated that he will speak with the litigating attorney's to change how the orders are presented to prevent this type of problem in the future. Dr. Thompson has met all the reporting requirements and has been sending all required documents to Ms. Stone, Disciplinary Coordinator. After discussion, Ms. Casey made a motion to issue a contingent order of compliance after September 28, 2007 that the probation be lifted. Dr. Douglass seconded the motion. The motion carried.

Report to the Board

Gary Stump, DDS- Dr. Stump is required by Board Order to come before the Board on an annual basis to show that he is still in compliance with his order. Dr. Stump stated that he is still working with the Concerned Dental Professional Committee (CDPC) even though his contract with them has expired. Dr. Stump is still on probation.

Applicant Interviews

Lindsey Lightburn, RDA- Ms. Lightburn submitted an application to apply for registration as a dental assistant by certification. Ms. Lightburn has several convictions that needed to be addressed by the Board. After discussion, Dr. Bailey made a motion to approve Ms. Lightburn's application for registration by certification. Ms. Casey seconded the motion. The motion carried.

Charity Mann, RDA – Ms. Mann submitted an application to apply for registration as a dental assistant by completing a Board approved course and has passed the registration examination. Ms. Mann has several convictions and is currently on six (6) years probation. After discussion, Dr. Bailey made a motion to approve Ms. Mann's application for registration by board approved course. Dr. Smith seconded the motion. The motion carried.

Phermela S White, DDS – Dr. White submitted an application to apply for licensure by examination. Dr. White failed the SRTA examination three (3) times but has taken a remedial course through Meharry School of Dentistry. After discussion, Dr. Tabor made a motion to approve Dr. White's application by examination. Ms. Casey seconded the motion. The motion carried.

Connie Tatrow, RDA- Ms. Tatrow submitted an application to apply for registration as a dental assistant by completing a board approved course and has passed the registration examination. Ms. Tatrow has a conviction and is currently on five (5) year probation. After discussion, Dr.

Bailey made a motion to approve Ms. Tatrow's application for registration by board approved course. Dr. Smith seconded the motion. The motion carried.

Soo Sim, DDS – Dr. Sim submitted an application to apply for licensure by examination. Dr. Sim's took the North East Regional Board (NERB) starting September 2006 and finished on March 3, 2007. The Board no longer accepts NERB by board rule effective June 16, 2006 but Dr. Sim requested that the Board consider her application for licensure. After discussion, Ms. Casey made a motion to approve Dr. Sim's application for licensure by examination. Dr. Douglass seconded the motion. The motion carried.

Approval of Administration and Monitoring Nitrous Oxide Courses

Kellogg Community College- Documentation submitted to the Board to requesting that graduates of their ADA accredited dental hygiene program who apply for licensure in the State of Tennessee be eligible to apply for administrating and monitoring nitrous oxide modification based on board rule 0460-3-.06 (1)(b). After discussion, Dr. Tabor made a motion to accept the administrating and monitoring nitrous oxide program from Kellogg Community College as equivalent to the Board approve program. Dr. Prince seconded the motion. The motion carried.

Sacramento City College - Documentation submitted to the Board to requesting that graduates of their ADA accredited dental hygiene program who apply for licensure in the State of Tennessee be eligible to apply for administrating and monitoring nitrous oxide modification based on board rule 0460-3-.06 (1)(b). After discussion, Dr. Prince made a motion to accept the administrating and monitoring nitrous oxide program from Sacramento City College as equivalent to the Board approve program. Dr. Tabor seconded the motion. The motion carried.

University of Louisville- Documentation submitted to the Board to requesting that graduates of their ADA accredited dental hygiene program who apply for licensure in the State of Tennessee be eligible to apply for administrating and monitoring nitrous oxide modification based on board rule 0460-3-.06 (1)(b). After discussion, Dr. Bailey made a motion to accept the administrating and monitoring nitrous oxide program from University of Louisville as equivalent to the Board approve program. Dr. Prince seconded the motion. The motion carried.

Ratifications

Ms. Fox made a motion to accept the lists of newly licensed dentists, educational licenses, limited licenses, specialty certifications, and permits for limited and comprehensive conscious sedation, and deep sedation/general anesthesia, reinstatements, reactivations, administrative revocations and retirements. Ms. Casey seconded the motion. The motion carried with Dr. Tabor being recused.

Ms. Casey made a motion to accept the lists of newly licensed dental hygienists, reinstatements, reactivation, retirements, administrative revocations and certifications to administrator and monitor nitrous oxide. Dr. Prince seconded the motion. The motion carried.

Ms. Fox made the motion to accept the lists of newly registered dental assistants, reinstatements, reactivations, retirements, administrative revocations and certifications for coronal polishing, nitrous oxide monitoring, and sealant application. Ms. Cherry seconded the motion. The motion carried with Dr. Bailey being recused.

Ratification of Continuing Education Courses and CPR Certification Courses

Dr. Bailey made a motion to accept the following for approval of the continuing education and CPR courses; Blended CPR Course, Non-Surgical Periodontal Therapy & Maintenance (2hrs) and Embezzlement in the Dental Office (3hrs). Ms. Cherry seconded the motion. The motion carried.

SEPTEMBER 14, 2007

Rules

Jerry Kosten, Rules Coordinator, presented rules pertaining to adding language regarding licenses issued in error, enacted provisions of Public Chapter 340 of the Public Acts of 2007, conditions imposed on disciplined licensees, criminal background checks for volunteers and delete the words full-time from the practice requirement for dental hygienists who are applying by criteria. After discussion, Dr. Douglass a motion to authorize a rulemaking hearing for the above proposed rules. Dr. Bailey seconded the motion. The motion carried.

Concerned Dental Professionals Committee (CDPC)

Dr. McElhiney, Director of the CDPC, asked the Board to accept the Prescription Writing Course for Dental Professionals that has been certified by the Center of Professional Health at the Vanderbilt University Medical Center. After discussion, Ms. Casey made a motion to accept the Prescription Writing Course for Dental Professionals as an approved course to be given to disciplined dental professional as an option along with the Prescribing Controlled Drugs: Critical Issues and Common Pitfalls” course given at the Center of Professional Health at the Vanderbilt University Medical Center. Dr. Prince seconded the motion. The motion carried.

Applicant Interviews

Kent E White, DDS- Dr. White is applying for licensure by examination after having surrendered his license to the Board on May 26, 2006. Dr. White has criminal convictions and by order of the court is on probation for four (4) years, cannot get his DEA license while on probation and has signed a lifetime contract the Concerned Dental Professional Committee (CDPC). Dr. McElhiney, Director of the CDPC, spoke on behalf of Dr. White. After discussion, Ms. Casey made a motion to approve Dr. White application for the re-issuance of his Tennessee dental license on probationary status to run concurrently with his court order probation. Ms. Fox seconded the motion. The motion carried with Dr. Douglass voting in the negative. Mr. Sykes will draft a letter to Dr. White explaining the Board’s decision. After the letter has been signed and returned to Mr. Sykes, Dr. White will be issued his licensure on a probationary status.

Contested Cases

Rebecca Vandagriff- Ms. Vandagriff was present via telephone. Ms. Lexie Whittemore represented the State and Ms. Ann Johnson was the Administrative Law Judge hearing the case. Ms. Whittemore distributed the Notice of Charges. Ms. Vandagriff was charged with unlicensed practice as a registered dental assistant. After hearing the testimony, the Board found Ms. Vandagriff guilty of unlicensed practice as a registered dental assistant. Ms. Fox made a motion to assess a \$5,500 civil penalty to be paid within two (2) years from the date of the order. Ms. Cherry seconded the motion. The motion carried with Dr. Tabor, Dr. Hsia and Dr. Smith voting in the negative. Ms. Casey made a motion to assess case cost. Ms. Fox seconded the motion. The motion carried with Dr. Smith, Dr. Hsia, Dr. Prince and Dr. Tabor voting in the negative.

Sharon Murrell-Winter Miller- Ms. Murrell-Winter Miller was not present nor represented by legal counsel. Ms. Whittemore represented the State and Ms. Johnson was the Administrative Law Judge hearing the case. Ms. Whittemore asked the Judge for a motion for default. Ms. Whittemore presented evidence that she had tried to contact Ms. Murrell-Winter Miller by registered mail, letters sent to the attorney who represented her during the previous board order and white pages search, etc. Ms. Fox made a motion to accept the motion to default. Dr. Prince seconded the motion. The motion carried. Ms. Murrell-Winter Miller was being charged with violating the Agreed Order that was dated September 22, 2006. After discussion, Dr. Douglass made the motion to accept the proposed order as written. Ms. Casey seconded the motion and the motion carried. Ms. Murrell-Winter Miller registration as a dental assistant has been revoked and she has been assessed case cost to be paid within thirty (30) days from the filing of the Affidavit of Cost.

Consent Order

Lawrence W Trivette, Jr., DDS- Dr. Trivette was charged with unprofessional, dishonorable, or unethical conduct; violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto, or any criminal statute of the State of Tennessee. Dr. Trivette must surrender his license commencing from the effective date of the Consent Order, pay all previously assessed cost from a consent order dated January 27, 2006 and all cost assessed with this consent order within thirty (30) days from the ratification of this consent order. Ms. Casey made a motion to accept the Consent Order as presented. Dr. Tabor seconded the motion. The motion carried.

Kent T Melbourne, DDS- Dr. Melbourne was charged with unprofessional, dishonorable, or unethical conduct; habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances or other drugs or stimulants, such as, but not limited to, nitrous oxide sedation, in such manner as to adversely effect the person's ability to practice dentistry, dental hygiene or as a registered dental assistant; engaging in the practice of dentistry, dental hygiene, or as a registered dental assistant when mentally or physically unable to safely do so; conducting the practice of dentistry so as to permit directly or indirectly an unlicensed person to perform services or work that under the provisions of this chapter can be

done legally only by persons licensed to practice dentistry or dental hygiene or as a registered dental assistant. Dr. Melbourne license will be placed on probation for five (5) years commencing from the effective date of the Consent Order. Dr. Melbourne must maintain advocacy without interruption from CDPC and must execute all appropriate releases allowing the CDPC to report on said compliance and any violation of this Consent Order or the terms and conditions of any recommended treatment directly to the Board's Director no less than quarterly throughout the disciplinary period. Dr. Melbourne must attend and complete within six (6) months from the effective date of this Consent Order, "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" at the Center for Professional Health at Vanderbilt University Medical Center in Nashville, TN, "Intensive Course in Medical Record Keeping with Individual Preceptorships" within twelve (12) months from the effective date of this Consent Order and no less than three (3) hours of American Dental Association and/or Tennessee Dental Association approved continuing dental education in the area of ethics within twelve (12) months from the effective date of this Consent Order. Proof of attendance must be submitted to the Board upon completion of the course. Dr. Melbourne has also been assessed a civil penalty in the amount of \$9,400 payable within sixty (60) days from the effective date of this order and assessed case cost that must be paid within thirty (30) days of his receipt of the Affidavit of Costs. Dr. Melbourne cannot petition the Board for an Order of Compliance until five (5) years from the effective date of this Consent Order. At that time, Dr. Melbourne must show that all the terms and conditions on his Tennessee dental license imposed herein have been met. Ms. Casey made a motion to accept the Consent Order as presented. Ms. Fox seconded the motion. The motion carried.

Sam Watts, DDS- Dr. Watts was charged with unprofessional, dishonorable or unethical conduct and conducting the practice of dentistry so as to permit directly or indirectly an unlicensed person to perform services or work that under the provisions of this chapter can be done legally only by persons licensed to practice dentistry or dental hygiene or as a registered dental assistant. Dr. Watts must pay \$3,000 in civil penalties within ninety (90) days of the effective date of this Consent Order and \$750 in case cost within thirty (30) days of the receipt of the Affidavit of Costs. Ms. Casey made a motion to accept the Consent Order as presented. Dr. Bailey seconded the motion. The motion carried.

Letters of Reprimand

Richard L Robinette, DMD- Dr. Robinette was issued a Letter of Reprimand due to administering conscious sedation without a permit and failure to report a Medical Malpractice Payment Report showing settlement payment made on his behalf on or about September 21, 2004. In addition to the Letter of Reprimand, Dr. Robinette was assessed a civil penalty in the amount of \$2,700 payable within thirty (30) days of the date of ratification of this reprimand by the Board of Dentistry and case cost which must be paid within thirty (30) days from receipt of the Affidavit of Cost. Dr. Bailey made a motion to accept the Letter of Reprimand as presented. Ms. Casey seconded the motion. The motion carried.

Steven E Ellis, DDS- Dr. Ellis was issued a Letter of Reprimand for allowing a dental hygienist whose license expired on or about May 2005 to perform the duties of a duly licensed dental hygienist through at least August 2006. In addition to the Letter of Reprimand, Dr. Ellis was assessed a civil penalty in the amount of \$1,000 plus case cost payable within six (6) months of

the date of the Letter of Reprimand. Dr. Clark went to school with Dr. Ellis and Dr. Prince knows Dr. Ellis. Both Dr. Clark and Dr. Prince felt as though they could make a fair decision about the case. Ms. Casey made a motion to accept the Letter of Reprimand as presented. Dr. Bailey seconded the motion. The motion carried.

Robert H Jones, DDS- Dr. Jones was issued a Letter of Reprimand for allowing an unregistered dental assistant to practice as a registered dental assistant from January 1999 to March 2006. In addition to the Letter of Reprimand, Dr. Jones was assessed \$1,000 in civil penalties plus case cost payable within six (6) months of the date of this letter. Ms. Casey made a motion to accept the Letter of Reprimand as presented. Dr. Tabor seconded the motion. The motion carried.

Thomas W Onstott, DDS- Dr. Onstott was issued a Letter of Reprimand for allowing an unregistered dental assistant to practice as a registered dental assistant from approximately September 1990 to September 2006. In addition to the Letter of Reprimand, Dr. Onstott was assessed \$1,000 in civil penalties plus case cost payable within six (6) months of the date of this letter. Dr. Tabor and Dr. Prince know Dr. Onstott. Both Dr. Tabor and Dr. Prince felt as though they could make a fair decision about the case. Dr. Tabor made a motion to accept the Letter of Reprimand as presented. Ms. Casey seconded the motion. The motion carried.

Agreed Order

Jackie Henderson, RDA- Thomas Miller presented the Agreed Order signed by Ms. Henderson to the Board. After review of the Agreed Order, Ms. Casey made a motion to accept the Agreed Order as presented. Dr. Tabor seconded the motion. A roll call vote was taken with Dr. Prince, Dr. Tabor, Dr. Hsia, Dr. Bailey and Ms. Casey voting affirmative and Dr. Douglass, Dr. Smith, Ms. Cherry, Ms. Fox and Ms. Young voting in the negative. Dr. Clark has the deciding vote and he voted in the negative. The motion failed. The Agreed Order was not accepted.

The meeting was adjourned at 1:15 p.m.

Ratified by the Board of Dentistry on January 10, 2008.