

Board of Dentistry

Minutes

Date: September 22-24, 2004

Location: Cumberland Room
Ground Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37247-1010

Members Present: Marlene S. Waren Fullilove, R.D.H., Vice President
Harold L. Fitts, D.D.S., Secretary/Treasury
Beth A. Casey, R.D.H.
Bobby Cook, D.D.S.
Jeffery M. Clark, D.D.S..
Betty Gail Fox, R.D.A.
John M. Douglas, Jr. D.D.S.
William Nally, D.M.D.
Eben A. DeArmond, Jr. D.D.S.
Mike Tabor, D.D.S.
Mark H. Wildasin

Staff Present: Paul David, Board Director
Dea Smith, Board Manager
Tammy Roehrich, Board Administrator
Robbie Bell, Director, Health Related Boards
Ernest Sykes, Advisory Attorney
Jerry Kosten, Regulations Manager
Joseph Schmitt, Associate General Counsel
Jonathan Stevens, Associate General Counsel
Harry Weddle, Deputy General Counsel

Administrative Staff: Joyce Safley, Administrative Law Judge
Elizabeth Miller, Court Reporter

September 22, 2004

The Board's Vice President, Marlene S. Fullilove, determined a sufficient number of board members were in attendance to constitute a quorum. The quorum was determined by the presence of Ms. Fullilove, Dr. Fitts, Ms. Casey, Dr. Clark, Dr. Douglas, Dr. DeArmond, Ms. Fox, Dr. Nally, Dr. Tabor, and Mr. Wildasin. Therefore, the meeting of the Tennessee Board of Dentistry was called to order at 1:05 p.m. Ms Fullilove welcomed Dr. Mike Tabor to the Board. Dr. Cook was not present. Dr. Nally left at 5:30pm.

Conflict of Interest Policy

Ms. Fullilove requested the Board members review the Conflict of Interest Policy, which was included in the notebooks.

Approval of Minutes

After review, a motion was made by Dr. Douglas and seconded by Dr. DeArmond to approve the minutes from the May 2004 and September 2004 meetings. All present voted in the affirmative to approve the minutes.

Office of General Counsel Report

Mr. Sykes, General Counsel and Advisory Attorney, referred the members to the legislation, which was included in the notebooks. Mr. Sykes discussed each Bill and gave an explanation of why they were necessary. There were no questions by the Board members concerning the legislation.

Local Anesthesia

Ms. Casey submitted a proposal from the local anesthesia committee for a rule on local anesthesia to be sent to rule making hearing. A motion was made and seconded to table the discussion until Friday September 24, 2004.

Rules Report

Mr. Kosten came before the Board to discuss new rules which were ready for roll call vote to send to rule making. The Board reviewed the following proposed rules to send to rule making hearing:

Volunteer practice as authorized by P.C. 579, granting of specialty certification by reciprocity for dentist as authorized by P.C. 720, definition for oral prophylaxis, fees, and housekeeping changes regarding dental assistant examination.

After review and discussion Ms. Casey made a motion to send to rule making hearing as written. Dr. Fitts seconded the motion. All members present voted in the affirmative to send rule making hearing. Motion carried.

The Board reviewed the following new rules for Roll Call Vote:

- (1) Retake and repeal fee for dentist state clinical examination, corrections to continuing education, mobile dental clinics, nursing home patient treatment and records, and reword criteria applicant exam retake.

After review and discussion of the letters submitted from the Tennessee Dental Association concerning rule 0460-1-.15, Treatment of Nursing Home Patients, a motion was made and seconded to change the language in 0460-1-.15(4) "Obtain the written consent of the patient's physician" to read "Consult with the patient's physician when medically indicated". Dr. Clark made a motion to adopt as amended, Dr. Fitts seconded the motion. All members present voted in the affirmative to adopt as amended.

- (2) Restorative and prosthetic certification process, plus courses content and a revise definition of prosthodontics.

Specialty Advertising 0460-2-10

Mr. David discussed the reasons that this rule needed to be revisited. The Board members were directed to letters in the Board materials which contained comments concerning the rule. After review of the letters a discussion was held. Dr. Walter Chitwood, of Murfreesboro, addressed the Board on this issue. Dr. Chitwood expressed his concerns with how this rule would affect the practice of some dentist in Tennessee. Dr. John Baynok, from Memphis, also addressed the Board with his concerns. Mr. Sykes suggested the Board withdraw the rule and a committee be formed to study the issue and bring their finding back to the Board. Dr. Clark made a motion that the rule is withdrawn and a committee formed to study the issue. Dr. Tabor seconded the motion. The following members voted in the affirmative to withdraw the advertising rule Ms. Fullilove, Dr. Fitts, Ms. Casey, Dr. Clark, Dr. Douglas, Dr. DeArmond, Ms. Fox, Dr. Nally, and Dr. Tabor. The following voted in the negative Mr. Wildasin. Dr. Cook was not present to vote.

Ms. Fullilove appointed the following to a committee to review the advertising rule: Dr. Tabor, Dr. Clark Dr. Douglas, Mr. Wildasin, Dr. Chitwood from the TDA, and Dr. Clark

Restraint of Children

Mr. David explained to the Board members the reason for this being on the agenda. He also let them know that Ms. Fullilove did not feel that this rule should be revisited. Mr. Sykes gave his option on revisiting rules. Ms Robbie Bell told the Board that she would not like them to get in the habit of revisiting rules that had already been voted on and adopted by the Board. After discussion the Board decided not to revisit the rules concerning child restraint in a dental office.

Tennessee State Exam

Dean Slagel and Dr. George addressed the Board and pointed out the advantage of having a Tennessee State Exam. Dr. Malone, President of SRTA addressed the Board and

gave his opinion on the Tennessee only exam for Dentist. Dr. Nally informed the Board that there was going to be a national exam in the near future and that it would not be any benefit to have a Tennessee only exam. Dr. Malone confirmed that there was going to be national exam. Ms Bell told the Board about what she and Ms. Smith observed when they went to an exam being given by the Southern Regional Testing Agency. Dr. Nally made a motion to terminate the Tennessee State Exam. Dr. DeArmond seconded the motion. The following voted in the affirmative to terminate the exam: Ms. Fullilove, Dr. Fitts, Ms. Casey, Dr. Douglas, Dr. DeArmond, Ms. Fox, Dr. Nally and Mr. Wildasin. Dr. Tabor voted against the removal. Dr. Cook was not present to vote.

Tennessee Peer Assistants Program

Ms Smith explained to the Board the reason that this was necessary. Ms Elaine Eden from TENNPAP addressed the Board. She gave them details of their program and the steps they take to help the individuals that sign a contract with them. Dr. Goodrich from the Concerned Dental Professionals Committee voiced his concerns on letting someone in the dental profession go outside the profession for treatment. Ms Bell informed the Board of some of the problems that she was aware of with the CDPC. After discussion Ms Casey made the motion that a committee be formed to study the situation and report back to the Board. Mr. Wildasin seconded the motion. All members present voted in the affirmative to form a committee. The committee members are as follows: Betty Fox, Beth Casey, and Eben DeArmond.

Registered Dental Assistants Exam Survey

Ms. Smith directed the Board to the survey under Tab 5 in the Boards books. Mr. David informed the Board the new exam had been in place since September 15. The Board reviewed the survey and had no questions.

Office of Investigations Report

Ms. Smith referred the Board members to the report, which was included in the notebooks. Ms. Lea Phelps, from the Office of Investigations, reviewed the report with the Board. Dr. DeArmond asked about the continuance of cases. Mr. Sykes explained the process. There were no other questions.

Director's Report

Mr. Paul David, Director of the Board, presented a short report to the Board. The information in the report was based on information included in the regular Board business. Mr. David informed the Board of a new addition to the staff. Tina Taliaferro, one of the licensing technicians, delivered another beautiful baby girl on September 10, 2004. Tina will be out of the office for several months and that will leave the office shorthanded.

Travel Regulation

Board reviewed information concerning travel regulation in Board materials provided. There were not questions.

Financial Report

Board was directed to the report in the Board materials provided. After review, there were no questions.

Office of General Counsel Report

Mr. Sykes directed the Board to the report provided in the Boards materials. Mr. Sykes reviewed the report making one correction. In the report it stated that 0460-1-.06 regarding disciplinary actions, and order modifications had been sent to the Attorney General on March 26, 2004 but they were actually sent on November 2, 2004. There were no further questions.

Concerned Dental Professional Committee

The Board reviewed the report provide in notebooks.

Correspondence

The Board reviewed and discussed the correspondence in the Board Books.

Ratifications

Ms Casey motioned with the second to Dr. Clark to ratify all items involving dental licensure and waiver of CPR in Tab 20 of the board books after review. All members present voted in the affirmative.

Ms Casey motioned with the second to Dr. Douglas to ratify all items involving dental hygiene licensure in Tab 21 of the board books after review. All members present voted in the affirmative.

Dr. Clark motioned with the second to Ms Casey to ratify all items involving dental assistants in Tab 22 of the board books after review. All members present voting in the affirmative.

Ms. Fox motioned with the second to Ms. Casey, to ratify all items involving continuing education approval in Tab 23 of the board books after review. All members present voted in the affirmative.

Ms. Casey motioned with the second to Ms. Fox to ratify all items involving individual continuing education courses in Tab 24 of the Board Books after review. All members present voted in the affirmative.

Ms Casey motioned with the 2nd to Ms Fox to ratify all items involving Conscious Sedation courses in Tab 25 of the board books after review. All members present voted in the affirmative.

Certification Course Approvals

The University of Tennessee, Health Science Center submitted course information for approval of an administration and monitoring nitrous oxide course. A motion for approval from Ms. Casey and a second to Ms. Fox was made to approve the course. All members present voted in the affirmative.

The University of Tennessee, Health Science Center submitted course information for approval of a monitoring nitrous oxide course. A motion for approval from Dr. DeArmond and a 2nd to Dr. Clark was made to approve the course. All members present voting in the affirmative.

A motion was made by Dr. Tabor and a second to Dr. Douglas to recess the meeting until Thursday morning at 9:00am

September 23, 2004

The Board's Vice President, Marlene S. Fullilove, determined a sufficient number of board members were in attendance to constitute a quorum. The quorum was determined by the presence of Ms. Fullilove, Dr. Fitts, Ms. Casey, Dr. Clark, Dr. Cook, Dr. Douglas, Dr. DeArmond, Ms. Fox, Dr. Nally, Dr. Tabor, and Mr. Wildasin. Therefore, the meeting of the Tennessee Board of Dentistry was called to order at 9:08 p.m., Central Time. Ms. Fullilove welcomed students from the hygiene program at Tennessee State University. Dr. Tabor left at 6:00p.m.

Remanded Limited Hearing on Evidentiary Matter

Dr. Roosevelt S. Smith, DDS

Judge Joyce Safley has been assigned by the Secretary of State to serve as the Administrative Law Judge. The respondent was represented by David Hornick of the Nashville Bar. The State was represented by Harry Weddle, from the Department of Health, Office of General Council.

Disciplinary Action

The Board, at its meetings in September and October of 2004, took the following disciplinary actions:

Adams, John David C. – License No. DS 4548

Violation of an Order of the Board. Respondent's license was revoked and he was ordered to pay costs. All members present voted in the affirmative.

Hinds, William David - License No. DS 3730

Unprofessional conduct and violation of any criminal statute of the state of Tennessee. Respondent's license was revoked and he was ordered to pay costs. All members present voting in the affirmative

Johnson, Cory J. - License No. DS 7320

Unprofessional conduct, disciplinary action in another state for acts or omissions which would constitute grounds for discipline of a person licensed in this state, gross malpractice and failure to keep dental records in such a manner that a subsequent treating dentist can readily ascertain the treatment provided. Respondent's license was suspended until such time that he is able to demonstrate to the Board that his Georgia dental license is in good standing, and he was ordered to pay costs. All members present voting in the affirmative.

Lowe, Gertrude – Not licensed

Operating a place where dental operations or dental services are performed without a dental license and willfully and knowingly practicing dentistry, by operating a dental clinic, without a license.

Respondent' was assessed civil penalties in the amount of \$54,000. This penalty was stayed by the Board until the May 12, 2005 meeting at which the Respondent will appear and report as to the ownership and operation of the dental office. If the office has been sold or permanently closed, the penalty is cancelled and no longer due. The Respondent must appear at the January 26, 2005 meeting to report on the progress toward the sale or closing of the office. If, at the May 12, 2005 meeting (or any subsequent hearing should the Respondent's deadline be extended), the Board finds that the Respondent has neither sold nor closed the practice, the civil penalties assessed will become immediately due and payable and the Department may seek further civil penalties at the rate of \$1000 per day for any further period of practice of the clinic by the Respondent. All members present voting in the affirmative.

Thompson, Albert P. - License No. DS 2743

Unprofessional, dishonorable, or unethical conduct; gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of professional practice; engaging in the practice of dentistry when 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 which can be done legally only by a licensed person; permitting any dental hygienist or dental assistant to perform any acts or services other than those specifically assignable or delegable. Respondent's license was placed on probation for three years with terms and conditions and he must pay civil penalties of \$100 and costs. All members present voting in the affirmative.

Fortner, James L. – License No. DS 2015

Respondent was not present. Dan Warlick of the Nashville Bar was present to represent respondent. Mr. Warlick requested a continuous of the agreed order due to Dr. Fortner being unable to attend the meeting. Ms. Casey commented that she had seen the doctors' name on several agenda and it had not been resolved yet. Dr. Fitts made a motion 2nd to Dr. Clark that a continuous be granted. All members present voting in the affirmative.

Order Modifications

Laura B. Dove, DDS

Dr. Dove was present. She addressed the Board asking them to left probation of her license. A motion was made my Dr. Cook and 2nd to Dr. Fitts to left he probation of Dr. Doves' dental license. All members present voting in the affirmative.

Donald N. Meyers, DDS

Dr. Meyers was present. He addressed the Board asking them to left probation of his dental license. A motion was made by Dr. DeArmond and 2nd to Dr. Fitts to lift the probation of Dr. Meyers' license. All members present voting in the affirmative.

Ronald E. Rosson DDS

Dr. Rosson was present. He addressed the Board asking that the probation of his dental license be lifted. A motion was made by Dr. DeArmond and 2nd to Dr. Douglas to lift the probation of Dr. Rossons' license. All members present voting in the affirmative.

William K. Woods, DMD

Dr. Woods was present. He addressed the Board asking that the probation of his dental license be lifted. A motion was made by Dr. Clark and 2nd to Dr. Fitts to lift the probation of Dr. Woods' license. All members present voting in the affirmative.

Cynthia Murphy, RDA

Ms Murphy was present. She addressed the Board asking that they allow her to change from the Concerned Dental Profession to another group in order to be in compliance with the previous order from the Board. She explained the reason for the request. A motion was made by Dr. Cook and 2nd to Dr. Nally to allow her to change groups. All members present voting in the affirmative.

Contested Cases

Kogan, Eleonora—License No. DS 7554

Joyce Safely has been assigned by the Secretary of State to serve as the Administrative Law Judge. The respondent was represented by James Thomas and Michael Robins from the Memphis Bar. The State was respondent was represented by Joseph Schmitt from the Department of Health, Office of General Counsel. Arguments and testimony in the Dr. Kogan case continued the rest of the day. A motion was made and seconded to recess until Friday morning to deliberate and make a discussion on the case.

September 24, 2004

The Board's President, Marlene S. Fullilove, determined a sufficient number of board members were in attendance to constitute a quorum. The quorum was determined by the presence of Ms. Fullilove, Dr. Fitts, Ms. Casey, Dr. Clark, Dr. Cook, Dr. Douglas, Dr. DeArmond, Ms. Fox, Dr. Nally, Dr. Tabor, and Mr. Wildasin. Therefore, the meeting of the Tennessee Board of Dentistry was called to order at 9:10 p.m., Central Time.

Contested Cases-Continued

Kogan, Eleonora – License No. DS 7554 Continued

The case of Dr. Kogan resumes and the Board introduces themselves for the record. After discussion and review of the evidence the Board came to the following discussion on unprofessional or dishonorable conduct and violation of statutes. Respondent's license was suspended until such time that the respondent submits to a mental examination pursuant to the Order to Compel or a reviewing court overturns the Order to Compel, accessed civil penalties in the amount of \$2000 and ordered to pay all costs.

Muscari, Paul V. - License No. DS 2797

Joyce Safely has been assigned by the Secretary of State to serve as the Administrative Law Judge. The respondent was represented by Dan Warlick. The State was respondent was represented by Jonathan Stevens from the Department of Health, Office of General Counsel. Mr. Stevens presented the states evidence and called the states expert witness. After the state rested its case the Board decides to recess until October 22, 2004 and the respondent will present his case to the Board

Letters of Reprimand

Branch, Roderick A. - License No. DS 5071

Unprofessional conduct and failure to comply with a request for records within ten working days upon written request by the patient or a patient's authorized representative. Respondent was reprimanded. All members present voting in the affirmative.

Jackson, D. Carl – License No. DS 8035

Unprofessional conduct, disciplinary action in another state for acts or omissions which would constitute grounds for discipline of a person licensed in this state and failure to update practitioner profile within 30 days after a reportable action. Respondent was reprimanded. All members present voting in the affirmative.

Jackson, D. Carl – License No. DS 8035

Unprofessional conduct, disciplinary action in another state for acts or omissions which would constitute grounds for discipline of a person licensed in this state and failure to update practitioner profile within 30 days after a reportable action. Respondent was reprimanded. All members present voting in the affirmative.

Applicant Interview

Dr. Alfred Theis, DDS- Dr. Theis did not indicate disciplinary from another state on his application for licensure. When verification from Florida was received it indicated discipline concerning an advertising violation. Dr. Theis explained to the Board what had happened and that he was not trying to hind anything when answered no to the question concerning disciplinary of a license. Dr. Cook made a motion and 2nd to Dr. Tabor to approve the application for licensure. All members present voting in the affirmative.

Dr. Robert Todd Gililand, DMS0- Dr. Gililliand did not indicate discipline from another state on his application for licensure. When verification from Mississippi was received it indicated discipline for an advertising violation. Dr. Gililand explained the disciplinary action in Florida. Dr. Gililand informed the Board that he did not intentionally try to deceive the Board that he just forgot about the discipline in Mississippi. Dr. Nally made a motion and 2nd to Dr. Fitts to approve the application for licensure. All members present voted in the affirmative.

Cindy Mae Keirn, DA- Ms. Kiern indicated she had a misdemeanor on the application for Dental Assisting. The court documents showed that she was still on probation. The Board members question her about the incident and if she had been in other trouble since. Ms. Keirn explained that she had not and that she had learned a lesson from the experience. Ms. Casey made a motion and 2nd to Dr. Nally to approve Ms Keirn for licensure. All members present voted in the affirmative.

Melissa Bertram, RDH- STRA scores over 5 years old. The Board asks Ms. Bertram her reason for licensure in Tennessee and where she thought she might practice. Ms. Bertram was not sure where she would be practicing. Dr. Clark made a motion and 2nd to Dr. Fitts to approve Ms. Bertram for licensure.

Jeannett Denchfield, RDH- NERB scores over 5 years old. The Board asks Ms. Denchfield how long she had been practicing and the reason for becoming licensed in

Tennessee. Dr. DeArmond made a motion and 2nd to Dr. Fitts to approve Ms. Denchfield for licensure.

Discussion on Local Anesthesia

Ms. Casey gave a report to the Board on the findings of the Local Anesthesia committee. She also presented the members with a copy of a proposed rule. After review of the rule the following changes were made:

1. Fee for Administration of Local Anesthesia Certification will be \$50.00
2. Minimum of three (3) years continuous full-time employment in a dental practice as a dental hygienist to be eligible for board approved certification course in administration of local anesthesia will be changed to two (2) years continuous employment.
3. Under 0460-5-.02 (3) the Board ask Mr. Sykes to reword

Ms. Casey made a motion to adopt the rules with these changes and send to rule making hearing. Dr. Nally 2nd the motion. All members present voted in the affirmative. Mr. Kosten explained that the rule making hearing for this rule would not be until March of 2005.

Election of Officers

Mr. David stated that if the Board wished to hold elections for Board officers that there was no rule which stated that they could not. Ms. Smith informed the Board that elections are normally held at the January meeting of each year. After discussion Dr. Douglas made a motion and 2nd to Dr. Tabor to hold election for officers. The following voted in the affirmative to hold election of offices Dr. Tabor and Dr. Douglas. The following voted against holding elections: Dr. Clark, Dr. Nally, Dr. Fitts, Dr. DeArmond, Ms. Casey, Ms. Fullilove, Ms. Fox, Mr. Wildasin, and Dr. Cook. Following the vote the election was not held.

Discussion to add Dates for 2005

Discussion was held on whether or not to add dates for meeting in 2005. Ms. Smith explained this might be a wise discussion because of the number of contested cases and Board business that has to be handled at each meeting. The Board did not add an additional dates to the calendar for meetings in 2005.

The Board prepared to adjourn until a request by Dr. Goodrich of the CDPC to speak.

Concerned Dental Professionals

Dr. Robert Goodrich, director of the Concerned Dental Professionals Committee, questioned the Board as to when the Board started allowing dental hygienist and dental assistants to attend other peer assistance programs. Ms. Fullilove informed Dr. Goodrich that there was one case the day before that the individual ask the Board to allow her to attend another program and the Board made the decision to allow this based on her testimony.

Dr. Goodrich explained to the Board what that individual had done to be required to attend the CDPC program and that since that individual "is no longer under our control" he does not know if the Board will receive any reports on it or not. Dr. DeArmond asked Dr. Goodrich if it would suffice for the other program to also send a report on the individual to the CDPC in addition to sending a report to the Board. Dr. Goodrich informed the Board that "if they don't want to cooperate with our program, I don't want anything to do with them!"

Dr. Goodrich ask the Board why he could not receive information, interviews and reports from the Office of Investigations and the Office of General Counsel (OGC) on complaints and pending cases when charges have not been filed. He referred to legislation that he says allows him as the director of the assistance program to access the information, interviews and reports with authorization by the Board. He told the Board that every time he had requested any information from Investigations or OGC that all proceedings are confidential until charged are filed. Mr. David reminded Dr. Goodrich that there had been a meeting about this issue with Ms. Judy Eads, Assistant Commissioner for the Department, and that if Dr. Goodrich still had questions and concerns, that he should contact Ms. Eads to request another meeting. Mr. David also reminded Dr. Goodrich that it is the position of Health Related Boards that all information regarding cases in which charges have not been filed is considered confidential information.

Dr. Goodrich then reminded the Board that he wants more money for the program and ask that they consider this when they review the budget for the next year. He also informed the Board that he did not have a written report for the last quarter only the numbers since he has been so busy for the past month. The Board did not have questions regarding the numbers he submitted for review.

Motion was made be Dr. Douglas and a 2nd to Dr. Clark to adjourn the meeting. All members present voting in the affirmative. The meeting of the Tennessee Board of Dentistry was adjourned at 6:25pm.