

**BOARD OF DENTISTRY
GENERAL BUSINESS MEETING
MINUTES DRAFT
February 19, 2016
The Courtyard by Marriott
Bradenton Riverfront
100 Riverfront Drive West
Bradenton, Florida 34205
(941) 747-3727
7:30 A.M.**

I. CALL TO ORDER/ROLL CALL

The meeting was called to order at 7:30 am by Dr. Perdomo, Chair. Those present for all or part of the meeting included the following:

MEMBERS PRESENT

Robert Perdomo, DMD, Chair
T.J. Tejera, DMD
William Kochenour, DDS
Angela Sissine, RDH
Claudio Miro, DDS
Naved Fatmi, DMD
Joseph Calderone, DMD
Tim Pyle, Consumer member

Excused Absent Members

Joe Thomas, DDS, Vice-Chair
Catherine Cabanzon, RDH, BASDH

Court Reporter

Pauline D. Terry
3533 Parkridge Circle
Sarasota, FL 34243
(941) 421-9757
pdterry_36@comcast.net

STAFF PRESENT

Jennifer Wenhold, Executive Director
Jessica Sapp, Program Administrator

BOARD COUNSEL

David Flynn, Esq.
Assistant Attorney General

PROSECUTING ATTORNEY

Bridgette McDonnell, Esq.
Asst. General Counsel, PSU

Dr. Perdomo requested that Mr. Pyle read the following mission, vision, and purpose:

Mission: To protect, promote & improve the health of all people in Florida through integrated state, county, & community efforts.

Vision Statement: Healthiest State in the Nation

Purpose: To protect the public through health care licensure, enforcement and information.

Introduction of Special Guests

Dr. Perdomo welcomed the dental students from LECOM as well as the dental hygiene students in attendance. Dr. Perdomo also recognized Dr. Antonio Castro for his many years of service as a dental consultant for the board.

II. WEB VIEWER INTRODUCTION

Siby Koshy, Technical Support team, Department of Health, presented an overview of the cloud based Web I-Viewer that will be used for future meetings.

III. DENTAL CARE IN ALTERNATIVE SETTINGS

Mark Whitten, Chief of Investigative Services, Department of Health, appeared before the Board to discuss coordination of investigations for complaints received regarding dental care in alternative settings.

IV. REVIEW OF MINUTES

A. November 20, 2015 General Business Meeting

The minutes of the November 20, 2015 meeting were presented and following review, the following action was taken by the Board:

Motion: by Dr. Tejera

Second: by Dr. Kochenour

Vote: Unanimous

V. REPORTS

A. Board Counsel

1. Request for Rules Hearing

Mr. Thomas Panza, Esq. submitted a request on behalf of Nova Southeastern University, for a public hearing regarding proposed Rule 64B5-17.002. Jennifer Panza was present to address the board with their concerns about the ability to continue to provide pro bono services. Mr Flynn explained the reasons for striking (9) of the rule as it is in contradiction to the practice act. Dr. Tejera clarified that pro bono services may still be provided and that the provider should keep the patient records for four years.

2. Rule 64B5-14.010, Statement of Estimated Regulatory Cost

The Board proposed the following rule amendment to clarify language concerning standard equipment for the operating and recovery room and to add mandatory equipment (capnograph).

64B5-14.010 Pediatric Conscious Sedation Requirements: Operatory; Recovery Room, Equipment, Medicinal Drugs, Emergency Protocols, Records, and Continuous Monitoring.

Pediatric Conscious Sedation Permit applicants and permit holders shall comply with the following requirements at each location where anesthesia procedures are performed. The requirements shall be met and equipment permanently maintained and available at each location.

(1) through (2) No change.

(3) Standard Equipment: The following equipment must be readily available to the operatory and recovery room and maintained in good working order:

(a) through (e) No change.

(f) Capnograph;

(g) ~~(f)~~ through (j) ~~(i)~~ No change

(4) through (7) No change.

(8) Continuous Monitoring: The patient who is administered a drug(s) for conscious sedation must be continuously monitored intra-operatively by pulse oximetry and capnograph to provide pulse rate, oxygen saturation of the blood, and ventilations (end-tidal carbon dioxide). ~~Drugs for conscious sedation must be administered in the dental office and the patient must be observed by a qualified office staff member. Continuous monitoring with pulse oximetry must be initiated with early signs of conscious sedation and continued until the patient is alert. A precordial, pretracheal stethoscope or capnograph must be available to assist in the monitoring of the heart rate and ventilations. A sphygmomanometer shall be immediately available.~~

Motion: by Dr. Tejera to approve

Second: by Dr. Kochenour

Vote: Unanimous

3. Rule Drafts for Review 64B5-9.011 Radiography Training for Dental Assistants (ADD LANGUAGE)

Mr. Flynn proposed the following revisions:

64B5-9.011 Radiography Training for Dental Assistants.

~~(1) Licensed dentists may position and expose dental radiographic films pursuant to Section 466.017, F.S.~~

~~(2) Dental hygienists may position and expose dental radiographic films pursuant to Section 466.023, F.S., and Chapter 64B5-16, F.A.C.~~

~~(3) (1) Dental assistants may position and expose dental radiographic images ~~films~~ only if they have been certified by the Department as dental radiographers or have graduated from a Board-approved dental assisting school or program.~~

~~(4) (2) Dental assistants may be certified as dental radiographers if they comply with the following requirements:~~

~~(a) Apply for certification on DH-MQA 1202, Dental Radiography Certification Application (Rev. 8/12), incorporated herein by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-02027> and available on the Department of Health's website at <http://www.doh.state.fl.us/mqa/dentistry>, and submit the nonrefundable fee prescribed by Rule 64B5-15.015, F.A.C.;~~

~~(b) Document having completed at least 3 months of continuous on-the-job training through assisting in the positioning of digital radiographic sensors and positioning and exposing of dental radiographic images ~~film~~ under the direct supervision of a Florida licensed dentist; and~~

~~(c) Document successful completion of a Board-approved course which meets the requirements of subsection 64B5-9.011(3) ~~(5)~~, F.A.C. within 12 months after completion of the on-the-job training required by paragraph 64B5-9.011(2) ~~(4)~~(b), F.A.C.~~

~~(5) (3) Only courses which provide training in the following areas may receive Board approval:~~

~~(a) Dental radiography practice and equipment;~~

~~(b) Radiation biology and radiation safety techniques;~~

~~(c) Hands-on instruction in the positioning of digital radiographic sensors and ~~dental radiograph~~ films through the use of appropriate mannequins that will provide the didactic objectives;~~

~~(d) Radiographic anatomy;~~

~~(e) Radiographic images ~~film~~ and processing;~~

~~(f) Intra-oral radiographic techniques;~~

~~(g) Supplemental techniques of dental radiography; and~~

(h) Infection control and sterilization techniques.

~~(4) (6)~~ A dental assistant's certification as a dental radiographer must be conspicuously displayed to the public in any dental office where these services are performed.

Dr. Kochenour requested that in the revised (3)(e) leave "film" but still add "images".

Motion: by Kochenour to approve

Second: by Calderone

Vote: Unanimous

The board considered the economic impact and determined the proposed revision will not have an adverse impact.

Motion: by Dr. Kochenour

Second: by Dr. Tejera

Vote: Unanimous

64B5-13.0045, Minor Violations

Mr. Flynn proposed the following revisions:

64B5-13.0045 Minor Violations.

(1) Subject to the limitations imposed by this rule, the following violations are designated as minor for the purposes of Section 456.073(3), F.S.

(a) Violation of Section 466.026(1)(a), F.S., by practicing for a period of less than two months without an active license.

(b) Violation of Section 466.028(1)(d), F.S., by the following errors or omissions:

1. Violation of subsection 64B5-4.002(2), F.A.C.

2. Violation of subsection 64B5-4.003(2), (3), (4) or (5), F.A.C., so long as there is no allegation of consumer injury as a result of the violation and the advertisement which is in violation is capable of being withdrawn from circulation to the public within 15 days of issuance of the notice of noncompliance.

~~3. Violation of Rule 64B5-4.004, F.A.C., so long as there is no allegation of consumer injury as a result of the violation and the advertisement which is in violation is capable of being withdrawn from circulation to the public within 15 days of issuance of the notice of noncompliance.~~

(c) Violation of Section 466.028(1)(n), F.S., so long as the records have been released.

(d) Violation of Section 466.028(1) (mm) ~~(aa)~~, F.S., by violating Rule 64B5-17.0011, F.A.C., which requires the licensee to notify the Board of changes of address.

(e) Violation of Section 466.028(1)(dd), F.S., by presigning laboratory work order forms.

(2) This designation of violations as minor for the purposes of Section 456.073(3), F.S., is limited to initial violations.

(3) A monthly report of notices of noncompliance issued by the Department shall be reviewed by the Board to monitor the use and success of this procedure.

~~(4) Notices of noncompliance issued shall be reviewed by the Probable Cause Panel in any consideration of subsequent allegations of similar violations by the licensee.~~

Motion: by Dr. Tejera to approve

Second: by Dr. Kochenour

Vote: Unanimous

The board considered the economic impact and determined the proposed revision will not have an adverse impact.

Motion: by Dr. Tejera
Second: by Dr. Kochenour
Vote: Unanimous

4. Annual Regulatory Plan

Mr. Flynn reviewed the annual regulatory plan with the Board which included laws enacted or amended, laws to be implemented through rulemaking and updates to the year's plan.

5. Rules Report

Mr. Flynn provided an overview of the current rules in progress.

B. Executive Director

1. Annual Delegations

Members reviewed the annual delegation of authority and after discussion, the following action was taken:

Motion: by Kochenour to approve
Second: by Tejera
Vote: Unanimous

2. Financial Reports

Financial reports including expenditures by function for the period ending September 30, 2015 and total expenditures, direct and allocated for 3 months ending September 30, 2015.

Members reviewed the ratification lists of licenses issued and the following action was taken:

Motion: by Dr. Tejera
Second: by Dr. Kochenour
Vote: Unanimous

C. Chairman

Dr. Perdomo will be attending the AADB in April and will provide an overview at the next meeting.

D. Vice-Chairman

None

E. Board Members

1. CDCA Meeting Highlights, Dr. Fatmi

Dr. Fatmi was in attendance at the January CDCA meeting in Orlando and shared highlights of this meeting with board members. Highlights included portability – 45 states now accept ADEX, Buffalo model – curriculum integrated format, and infection control.

VI. TOPIC DISCUSSION

A. Petition for Pro Bono Hours, Florida Mission of Mercy

The Florida Dental Association Foundation, Inc., through its Florida Mission of Mercy program has submitted a petition to the Board to formally approve Florida Mission of Mercy as a not-for-profit pro bono program under Rule 64B5-12.0185 so participating volunteers may receive continuing education credit.

Motion: by Dr. Kochenour to approve

Second: by Dr. Tejera

Vote: Unanimous

Motion: by Dr. Kochenour to direct counsel to amend the rule to include Florida Mission of Mercy in Rule 64B5-12.0185(2).

Second: by Dr. Tejera

Vote: Unanimous

The board considered the economic impact and determined the proposed revision will not have an adverse impact.

Motion: by Dr. Kochenour

Second: by Dr. Tejera

Vote: Unanimous

VII. FOR YOUR INFORMATION

A. ADEX 2015 Annual Meeting Highlights

B. 2016 ADEX Dental Exam Committee Member

C. ADA Resolution 77

Dr. Tejera clarified that this does not change anything in Florida as Florida currently has these rules in place.

D. House Bill 1113, An Act Relating to Continuing Education Requirements

Ms. Stoutamire updated the board on this bill. It was not heard in committee and the companion bill was dropped.

E. Senate Bill 1530, An Act Relating to Dental Licensing

F. Florida Health Impact Report

Prosecution Report

Ms. McDonnell presented the following prosecution report:

Total cases open/active in PSU: 382

Cases in EAU: 1

Cases under legal review:	252
Cases where PC recommendation made:	44
Total cases where PC has been found:	84
Cases in holding status:	0
Cases awaiting supplemental investigation:	12
Cases pending before DOAH:	1
Cases pending before Appeals Court:	3
Cases in intake status:	4
Agendaed for current or future Board Meeting:	3
Cases a year or older:	175

After review, the following action was taken:

Motion: by Dr. Kochenour to continue prosecuting cases over one year old.

Second: by Dr. Tejera

Vote: Unanimous

Dr. Tejera inquired about the plan of moving cases forward and managing the case load.

Dr. Perdomo requested a minimum of 10 cases on the next board meeting agenda.

Ms. McDonnell gave an overview of the regulatory case process.

VIII. DISCIPLINARY PROCEEDINGS

A. Steven Baxter, DDS, Case No. 2014-05347, Settlement (PCP- Melzer, Morgan, Winker)

Dr. Baxter was present and represented by David Coroso, Esq. Dr. Baxter was sworn in by the court reporter.

An Administrative Complaint filed August 10, 2015 alleged violations of s. 466.028(1)(x), F.S. of failure to meet minimum standards in diagnosis and treatment by surgically removing impacted third molars without taking adequate preoperative radiographs.

Probable Cause Panel Recommendation:

Reprimand, fine of \$5000, costs, continuing education – level I (3 – 6 hours) in diagnosis and treatment planning; exodontia level I (3 – 6 hours) as necessary to demonstrate achieved competency; laws and rules exam.

A Settlement Agreement was presented to the Board with the following terms:

- Appearance before the board
- Letter of Concern
- \$5000.00 fine to be paid within 18 months of the Final Order
- Costs of \$2,501.45 to be paid within 18 months of the Final Order
- Continuing education to be completed within 12 months of the Final Order: Level I in diagnosis and treatment, Level I in Endodontia
- Laws and rules exam to be successfully completed within 12 months of the Final Order

Following discussion, the following action was taken by the Board:

Motion: by Dr. Kochenour to reject the Settlement Agreement
 Second: by Dr. Tejera
 Vote: Unanimous

After discussion, the following counter-agreement was proposed:

Motion: by Dr. Kochenour to maintain the original terms with the exception of replacing the Letter of Concern with a Reprimand and reducing the fine to \$2500.00
 Second: by Dr. Tejera
 Vote: Unanimous

Dr. Baxter accepted the counter agreement.

**B. Hitesh Shroff, DDS, Case No. 2010-14054, Settlement
 (PCP- Melzer, Garcia, Thomas)**

Dr. Shroff was present and represented by Max Price, Esq. Dr. Shroff was sworn in by the court reporter. A two count administrative complaint was filed alleging violations of s. 466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment of the patient and s. 466.028(1)(x), F.S. of failure to meet minimum standards involving bridge using teeth not healthy enough for use as abutments, failure to perform a periodontal examination, failure to obtain informed consent, failure to take diagnostic radiographs for proper diagnosis.

Probable Cause Panel Recommendations: reprimand, fine of \$5000 for Count I and \$10,000 for Count II; costs, Continuing education: recordkeeping course; ethics course, Endodontics Level II (7 – 12 hours); diagnosis and treatment Level II (7 – 12 hours) as necessary to demonstrate competency; patient reimbursement, laws and rules exam.

A settlement agreement was presented to the Board with the following terms:

- Appearance before the board
- Letter of Concern
- \$5000.00 fine to be paid within 12 months of the Final Order
- Costs of \$3,500.00 to be paid within 12 months of the Final Order
- Continuing education to be completed within 12 months of the

- Final Order: Level I in periodontics, Level I in record keeping
- Laws and rules exam to be successfully completed within 12 months of the Final Order

Following discussion, the following action was taken by the Board:

Motion: by Dr. Tejera to accept

Second: by Dr. Kochenour

Vote: Unanimous

**C. Merys Downer-Garnette, DDS, Case No. 2015-23887,
Voluntary Relinquishment
(PCP- Waived)**

Dr. Downer-Garnette was not present nor represented by counsel. Allegations included Medicaid fraud and one count of felony organized scheme to defraud.

A Voluntary Relinquishment of license dated October 18, 2015 and a Motion for Final Order Based upon a Voluntary Relinquishment of License was presented to the Board.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Kochenour to accept

Second: by Dr. Tejera

Vote: Unanimous

D. Joseph Gaeta, Jr., DDS, Request for Reconsideration

Dr. Gaeta was present and sworn in by the court reporter. He was represented by Max Price, Esq. He filed a Motion for Reconsideration of Final Orders on the board's action of revocation taken at the November, 2015 meeting based upon a substantial change in circumstances.

The First District Court of Appeal relinquished jurisdiction back to the board for reconsideration.

The board first reconsidered Case No. 2013-16293, which was previously presented to the board as a waiver case.

After discussion, the following action was taken:

Motion: by Dr. Tejera to dismiss the Administrative Complaint and amend the previous final order to the costs case.

Second: by Dr. Miro

Vote: Unanimous

Motion: by Dr. Tejera granted an extension of 18 months to pay the outstanding costs of \$40,167.02.

Second: by Dr. Kochenour

Vote: Unanimous

The board reconsidered Case No. 2013-14250.

Dr. James Haddix, University of Florida, confirmed that he completed the remedial comprehensive course in January 2015 and final payment was received in May 2015.

Motion: by Dr. Tejera to grant reconsideration in Case No. 2013-14250 by leaving the Administrative Complaint in place, set aside the revocation and to recognize that the remedial course was successfully completed.

Second: by Dr. Perdomo

Vote: Unanimous.

IX. REVIEW OF APPLICATIONS/APPEARANCES/OTHER REQUESTS

A. National Provider Compliance Corporation, Application for CE Provider Status

Ms. Barry was present to address the board. This provider application was provided to the Board at the November 2015 board meeting and applicant requested that this be tabled to the February agenda for review.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Tejera to approved

Second: by Dr. Kochenour

Vote: Unanimous

B. A.J. Bonacquisti, Application for CE Provider Status

This provider application was presented to the Board at the August 2015 board meeting for initial review. An order filed September 15, 2015 required an appearance at one of the next two regularly scheduled meetings.

Dr. Tejera recused himself from voting but did provide a character reference on Mr. Bonacquisti.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Kochenour to approve Mr. Bonacquisti as a continuing education provider.

Second: by Dr. Miro

Vote: Unanimous

C. Charles Barquet, DDS, Consideration of License Expiration

Dr. Barquet was not present nor represented by counsel. Section 466.006(6), F.S. states that relocating applicants must document completion of a minimum of 1200 hours of clinical practice within the geographical boundaries of the state within the initial year of licensure. Dr. Barquet was licensed on December 23, 2014. The board office has not received proof of these requirements.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Tejera to issue a Notice of Expiration

Second: by Dr. Calderone

Vote: Unanimous

D. Ardis Taschner, RDH, Request to Reactivate Dental Hygiene License

Ms. Taschner submitted a request to withdraw her reactivation.

I. ANTI-TRUST TRAINING PRESENTATION

Mr. Ed Tellechea, Office of the Attorney General, and Liz Brady, Office of the Attorney General, presented a power-point overview of the Supreme Court Ruling including case background, purpose of anti-trust laws, discussion of active supervision and examples from the Federal Trade Commission Guidelines.

The board directed Dr. Perdomo to prepare a letter to the governor's office addressing the board's concerns relating to Risk Management's determine of not currently being able to provide coverage for members of defense costs, damages or attorney fees in the event of a successful anti-trust action.

X. OLD BUSINESS

Ms. Sissine discussed revising language in Rule 64B5-9.010(2)(b) so that it reflects more current practices. Mr. Flynn will work with Ms. Sissine to draft language for review by the rules committee.

Dr. Tejera discussed the continuing education requirements and asked the board to consider incorporating ACLS, ATLS and PALS into the 30 hour requirement. The following action was taken:

Motion: by Kochenour to approve

Second: by Dr. Calderone

Vote: Unanimous

XI. NEW BUSINESS

None

XII. ADJOURNMENT

The meeting adjourned at 12:15 p.m.