

# FIRST DRAFT

**BOARD OF DENTISTRY  
GENERAL BUSINESS MEETING  
MAY 17, 2013  
HYATT REGENCY HOTEL  
225 EAST COASTLINE DRIVE  
JACKSONVILLE, FL 32827  
(904) 588-1234  
7:30 A.M.**

## **CALL TO ORDER/ROLL CALL**

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

### **Members present:**

Carl Melzer, D.D.S.  
Wade Winker, D.D.S.,  
William Kochenour, D.D.S.  
Dan Gesek, D.M.D., Chair  
Carol Stevens, D.D.S.  
Catherine Cabanzon, R.D.H., B.A.S.D.H.  
Robert Perdomo, D.M.D., Vice-Chair  
Joe Thomas, D.D.S.  
Elmira Gainey

### **Staff present:**

David Flynn, Board Counsel  
Lynette Norr, Board Counsel  
Sue Foster, Executive Director  
Cindy Ritter, Program Administrator  
Adrienne Rodgers, Assistant General Counsel, Prosecution Services Unit  
Sharmin Hibbert, Section Manager, Prosecution Services Unit  
Gail Scott Hill, Assistant General Counsel, Prosecution Services Unit  
Jack Wise, Assistant General Counsel, Prosecution Services Unit  
Statewide Reporting, Beth Masters, 904-353-7706

Dr. Gesek requested that Ms. Gainey 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.

Dr. Gesek presented a plaque to Ms. Gainey and thanked her for service as a consumer member for the past ten years. Dr. Don Erbs, Florida Dental Association, was also recognized for his service as the FDA's liaison to the board for the past 5 1/2 years. Dr. Don Ilka was present and will serve in this role.

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## REVIEW AND APPROVAL OF MINUTES

### February 22, 2013 General Business Meeting

The minutes of the February 22, 2013 meeting were reviewed. Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to approve the minutes as presented

Second: by Dr. Kochenour

Vote: unanimous

## REPORTS

### Board Counsel

#### Rules Report

Mr. Flynn reported that there are no outstanding rules at this time.

#### Annual Regulatory Plan

Mr. Flynn prepared a report outlining the rules expected to be revised within the next two years. The report will be presented to the Governor's Office.

#### Rule Drafts for review

Mr. Flynn reviewed the following rules with the Board:

#### **Rule 64B5-14.0036 Treatment of Sedated Patients by Dentists without an Anesthesia Permit**

The rule draft presented to the Board addresses the requirement that a dentist must first have taken an initial airway management course before treating a sedated patient. This rule shall not take effect until March 1, 2014, the beginning of the next biennial renewal cycle.

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

Motion: by Dr. Thomas to accept the draft as orally amended

Second: by Dr. Kochenour

Vote: unanimous

Motion: by Dr. Thomas that this rule will not have an adverse impact on small business nor will it have a regulatory impact in the aggregate of \$200,000 or more within the first year of implementation

Second: by Dr. Kochenour

Vote: unanimous

Dr. Gesek reported that University of Florida, an oral surgeon in South Florida and Nova Southeastern University are all working on courses that meet the rule requirements.

#### **Revised draft - 64B5-14.0036 Treatment of Sedated Patients by Dentists Without an Anesthesia Permit.**

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The provisions of this rule control the treatment of patients where an anesthesia permitted dentist sedates the dental patient in his or her board-inspected and board-registered dental office and a Florida licensed dentist without an anesthesia permit performs the dental treatment. This rule shall control notwithstanding any rule provision in this Chapter to the contrary, which prohibits such conduct.

(1) The permitted dentist shall perform the sedation in his or her out-patient dental office where the permitted dentist is registered to perform the anesthesia services;

(2) The permitted dentist shall remain with the patient from the onset of the performance of the anesthesia until discharge of the patient;

(3) The permitted dentist shall have no other patient induced with anesthesia or begin the performance of any other anesthesia services until the patient is discharged;

(4) The treating dentist shall have taken a minimum of four hours of continuing education in airway management prior to treating any sedated patient. Two hours must be in didactic training in providing dentistry on sedated patients with compromised airways and two hours must include hands-on training in airway management of sedated patients. After the initial airway management course, the treating dentist shall continue to repeat a minimum of four hours in airway management every four years from the date the course was last taken by the dentist. The continuing education courses taken may shall be credited toward the mandatory thirty hours of continuing education required for licensure renewal. The requirement that a dentist must first have taken an initial airway management course before treating a sedated patient shall not take effect until March 1, 2014.

*Rulemaking Authority 466.004(4), 466.017 FS. Law Implemented 466.017 FS. History--New 3-14-13, amended \_\_\_\_\_.*

## **Rule 64B5-7.005 Teaching Permits**

The draft presented for board review requires that beginning on March 1, 2014, all new applicants must pass the Florida Dental laws and rules exam and comply with the continuing education requirements.

The board discussed the minutes that indicated that all current teaching permit holders would pass the laws and rules exam, not just new applicants. Following discussion, the following action was taken by the Board:

Motion: by Dr. Melzer to approve the draft as written

Second: by Dr. Thomas

Vote: motion passes with Ms. Gainey, Dr. Perdomo, Dr. Winker opposed

Motion: by Dr. Thomas that this rule will not have an adverse impact on small business nor will it have a regulatory impact in the aggregate of \$200,000 or more within the first year of implementation

Second: by Dr. Melzer

Vote: unanimous

## **Rule 64B5-14.004(6) Additional Requirements**

The amendment states that all dentists who hold an active sedation permit of any level must complete 4 hours of continuing education in airway management and 4 hours of continuing education in medical emergencies every 4 years. The continuing education must be taken

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through a board approved continuing education provider. The CE required by this subsection will take effect on March 1, 2014 and may be included in the 30 hour requirement.

The board requested Mr. Flynn amend his draft to include the same language as stated for rule 64B5-14.0036, FAC, (didactic training in providing dentistry on sedated patients with compromised airways and hands on training in airway management for sedated patients) and add the date that training must be completed. Following discussion, the following action was taken by the Board:

Motion: by Dr. Melzer to approve the draft as amended

Second: by Dr. Thomas

Vote: unanimous

Motion: by Dr. Gesek that this rule will not have an adverse impact on small business nor will it have a regulatory impact in the aggregate of \$200,000 or more within the first year of implementation

Second: by Dr. Kochenour

Vote: unanimous

## **REVISED PROPOSED AMENDMENT TO SUBSECTION (6):**

All dentists who hold an active sedation permit of any level must complete four (4) hours of continuing education in airway management and four (4) hours of continuing education in medical emergencies, every four (4) years from the last date the dentist took the continuing education course. The four (4) hours in airway management must include two hours didactic training in providing dentistry on sedated patients with compromised airways and two hours must include hands-on training in airway management of sedated patients. The continuing education must be taken through a board approved continuing education provider. The continuing education required by this subsection will take effect on March 1, 2014. The continuing education required by this subsection may be included in the thirty (30) hours required by Section 466.0135, F.S.

## **COMPLETE RULE CURRENTLY IN EFFECT:**

64B5-14.004 Additional Requirements.

(1) Office Team – A dentist licensed by the Board and practicing dentistry in Florida and who is permitted by these rules to induce and administer general anesthesia, deep sedation, conscious sedation, pediatric conscious sedation or nitrous-oxide inhalation analgesia may employ the office team approach.

(2) Dental Assistants, Dental Hygienists – Dental assistants and dental hygienists may monitor nitrous-oxide inhalation analgesia under the direct supervision of a dentist who is permitted by rule to use general anesthesia, conscious sedation, pediatric conscious sedation, or nitrous-oxide inhalation analgesia, while rendering dental services allowed by Chapter 466, F.S., and under the following conditions:

(a) Satisfactory completion of no less than a two-day course of training as described in the American Dental Association's "Guidelines for Teaching and Comprehensive Control of Pain and Anxiety in Dentistry" or its equivalent; and

(b) Maintenance of competency in cardiopulmonary resuscitation evidenced by certification

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in an American Heart Association or American Red Cross or equivalent Agency sponsored cardiopulmonary resuscitation course at the basic life support level to include one man CPR, two man CPR, infant resuscitation and obstructed airway, with a periodic update not to exceed two years.

(3) After the dentist has induced a patient and established the maintenance level, the assistant or hygienist may monitor the administration of the nitrous-oxide oxygen making only adjustments during this administration and turning it off at the completion of the dental procedure.

(4) Nothing in this rule shall be construed to allow a dentist or dental hygienist or assistant to administer to himself or to any person any drug or agent used for anesthesia, analgesia or sedation other than in the course of the practice of dentistry.

(5) A dentist utilizing conscious sedation in the dental office may induce only one patient at a time. A second patient shall not be induced until the first patient is awake, alert, conscious, spontaneously breathing, has stable vital signs, is ambulatory with assistance, is under the care of a responsible adult, and that portion of the procedure requiring the participation of the dentist is complete. In an office setting where two or more permit holders are present simultaneously, each may sedate one patient provided that the office has the necessary staff and equipment, as set forth in paragraph 64B5-14.003(2)(d), F.A.C., for each sedated patient.

(6) Each anesthesia permit holder must complete at least four (4) hours of continuing education relating to anesthesia each biennium the permit is held, to include two (2) hours dealing with the management of medical emergencies. These hours would be included in the 30 hours of continuing education required by Section 466.0135(1), F.S.

Specific Authority 466.004(4), 466.017(3) FS. Law Implemented 466.017(3) FS. History—New 1-31-80, Amended 2-13-86, Formerly 21G-14.04, Amended 12-31-86, 12-28-92, Formerly 21G-14.004, Amended 12-20-93, Formerly 61F5-14.004, Amended 8-8-96, Formerly 59Q-14.004, Amended 11-4-03, 6-23-04, 5-24-05.

### **Rule 64B5-14.003 Training, Education, Certification and Requirements for Issuance of Permits**

Mr. Flynn provided a draft amending rule 64B5-14.003(2)3.(b) - conscious sedation permit – minimum number of hours is sixty which must include 4 hours of airway management. Airway management must include emergency airway management protocols. The program must certify that a total of 3 hours of clinical training was dedicated to hands-on simulated competence in airway management of the compromised airway; amending (c) to state that formal training shall be affiliated with a university, teaching hospital or part of undergraduate curriculum of an accredited dental school and removing (g) which states that dentists permitted to administer conscious sedation may administer pediatric conscious sedation in compliance with Rule 64B5-14.010, FAC.

It was suggested that similar changes were needed in the rule regarding pediatric conscious sedation permits, that CPR language may need to be updated concerning man vs. person. Following discussion, the following action was taken by the Board:

Motion: by Dr. Melzer to approve the rule as amended and move (g) and changes to pediatric conscious sedation permit section to the anesthesia committee for discussion.

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Second: by Dr. Thomas  
Vote: unanimous

## **Rule 64B5 – 14.0038 Use of Qualified Anesthetists**

In an outpatient dental office, and pursuant to section 466.022(2), F.S., a dentist may supervise a qualified anesthetist who is administering anesthetic for a dental procedure on a patient of the supervising dentist. The type of supervision required is direct supervision as defined in section 466.003(8), F.S. In an outpatient dental office, the supervising dentist must have a valid permit for administering sedation to the level of sedation that the qualified anesthetist will be administering to the dental patient during the dental procedure. The dentist must maintain all office equipment and medical supplies required by this chapter to the level of the sedation that the qualified anesthetist will administer to the dental patient.

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

Motion: by Dr. Gesek to approve the language presented  
Second: by Dr. Winker  
Vote: unanimous

Motion: by Dr. Gesek that this rule will not have an adverse impact on small business nor will it have a regulatory impact in the aggregate of \$200,000 or more within the first year of implementation  
Second: by Ms. Gainey  
Vote: unanimous

## **Lobbying the Legislature**

### **Executive Director Ratification of Lists**

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

Motion: by Dr. Thomas to approve the lists  
Second: by Dr. Kochenour  
Vote: unanimous

**Board  
Chairman  
None**

**Vice-Chairman  
None**

**Members**

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Dr. Winker stated a need to establish recordkeeping requirements. Dr. Winker suggested the board come up with a more defined rule as to what is included in an appropriate dental record.

Dr. Gesek appointed a task force with Dr. Winker chairing and Dr. Melzer, Ms. Cabanzon and Dr. Kochenour. Input should also come from the dental and dental hygiene schools and the Florida Dental Association.

Dr. Winker requested that only one current board member sit on probable cause and also have a former member to chair the panel in the future. Efforts are currently made to use only one sitting member. It was noted that there are times when it is not possible due to member availability.

## **TOPIC DISCUSSION**

### **Invitation from NERB**

This invitation to Florida to join the North East Regional Board of Dental Examiners was placed on the February, 2013 agenda. It was requested that Board counsel check to see whether membership in the organization was a conflict of interest regarding the contract that the Department had with NERB.

David W. Perkins, D.M.D., Vice-Chair from the North East Regional Board of Dental Examiners, Inc. (NERB) was present. Dr. Perkins gave a personal invitation to the Board to join NERB. There is no fee to join NERB. The board currently has a relationship with NERB in that NERB has administered the Florida licensing examination in the past and currently administers the ADEX in dental and dental hygiene schools in Florida. Membership allows current and former board members to participate as examiners in out of state ADEX exam. The annual meetings are held in January in Florida.

Ms. Jackie McDonough advised that in the past there were 8 dental hygiene examiners and as of now all have been eliminated except one.

Dr. Perkins stated a Steering committee meeting is scheduled for June and he urged the board to send representatives.

Mr. Flynn advised he researched the issue and did not see any conflict with the board joining NERB.

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

Motion: by Ms. Gainey to accept the offer to have membership in NERB

Second: by Dr. Winker

Vote: unanimous

## **Conscious Sedation Programs Conscious Sedation Consulting**

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Mr. Pigg, BSN, as well as Dr. Steve Woodring, D.O., were present to discuss his program, Conscious Sedation Consulting, with the Board. There were questions about the location of the program, curriculum, etc. The board rules require that the program be part of a dental school accredited by the Commission on Dental Accreditation.

Dr. Steve Woodring, D.O., is a board certified anesthesiologist and verified that part of the learning process for students completing the conscious sedation courses is to ensure that they are well prepared for emergencies. Throughout the United States the course is offered in private dental offices.

Conscious Sedation Consulting was approved as a continuing education provider and received communication from CE Broker that the course IV Sedation Training Program was approved for CE credits. It is the opinion of board counsel that this course does not meet the requirements of 64B5-14.003(2), F.A.C. Mr. Flynn advised that the board does not pre-approve courses for sedation training. It was requested that Mr. Pigg and others in his program work with Mr. Flynn and he will contact Dr. Melzer regarding future course offerings.

### **Saving Lives Through Education, Amy Cober, Florida State University**

Ms. Cober requested an appearance before the Board to discuss Tobacco Cessation in the Dental and Dental Hygiene Professions. A copy of her Healthy People 2020 power-point presentation was included in the agenda.

Ms. Cober addressed the board and provided statistics and information to assist health care professionals in providing resources to smokers who wish to quit smoking. Ms. Cober requested that the board consider drafting a rule to offer continuing education regarding tobacco cessation.

### **Letter from Florida Dental Association Requesting Clarification**

Dr. Gesek requested that this issue be referred to the Anesthesia Committee agenda.

### **New Board Website**

### **FOR YOUR INFORMATION**

**Email from Rhina Delgado re Freedom of Reciprocity for Dentists**

**Previous Response to Ms. Rhina Delgado**

**Report on Oral Health Florida – Ms. Cabanzon**

**Florida Association of Pediatric Dentists Comments on New Sedation Rules, Dr.**

**Gesek's response**

**Letter from Clive Rayner, D.M.D. re: New Anesthesia Rules and Airway Courses**

**SB924 An Act Relating to Dentists**

**SB 1016 An Act Relating to Dentistry**

**HB 281 An Act Relating to Surgical Assistants and Surgical Technologists**

**HB 463 An Act Relating to Examination of Dentists**

**HB 581 An Act Relating to Dentists**

**HB 1205 An Act Relating to Sovereign Immunity for Dentists and Dental Hygienists**



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## **DISCIPLINARY PROCEEDINGS**

### **Introduction of New Employees in Prosecution Services Unit**

**Sharmin Hibbert, Section Manager**

**Jack Wise, Assistant General Counsel**

#### **Prosecutor's Report**

Ms. Rodgers provided a written report for the board's consideration. There are 261 cases pending as of May 2, 2013.

#### **Jimmy Allen Bowman, D.M.D., Case No. 2011-17585, Settlement Agreement, (PCP Melzer)**

Dr. Bowman was present and was represented by Edwin Bayo, Esq. A four count administrative complaint filed February 18, 2013 alleged 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 involving failure to document pocket depths, soft tissue exam, no oral screening exam, no comprehensive periodontal exam or treatment plan, no adequate informed consent for extensive prosthetic restorative treatment, adjustments to partial denture made by unlicensed staff person; s. 466.028(1)(g), F.S. of aiding, assisting unlicensed person to practice dentistry, a, 466.028(1)(z), F.S. of delegating professional responsibilities to person not qualified by training, experience or licensure; s. 466.028(1)(ll), F.S. of failure to notify the Board in writing within 10 days of any change of address.

#### Probable Cause Panel recommendation:

Reprimand, appearance before board, \$20,000 fine, cost, minimum of level two in diagnoses and treatment planning, minimum of level two in Removable Prosthetics, minimum of level one in record keeping, level two in ethics, six month suspension, successfully complete laws and rules examination within one year and one biennium C.E. audit.

A settlement agreement was presented to the board with the following terms: reprimand, fine of \$20,000 payable within 6 months, costs not to exceed \$5000 within 6 months, suspension of license for 6 months with 5 months stayed, 7-12 hours of continuing education in removable prosthetics, ethics, diagnosis and treatment planning, 3-6 hours of continuing education in record keeping, patient reimbursement (patient reimbursed 8/7/2012), laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Ms. Gainey to reject the settlement agreement

Second: by Dr. Kochenour

Vote: unanimous

Motion: by Dr. Gesek to offer a counter settlement agreement with the following terms: reprimand, fine of \$20,000 payable within 6 months, costs not to exceed \$4598.31 within 6 months, suspension of license for 6 months with 3 months stayed, the following continuing education at or through an accredited dental school to

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competency: Level II in removable prosthetics, diagnosis and treatment planning, Level I in record keeping, college level ethics course, patient reimbursement (patient reimbursed 8/7/2012), laws and rules exam within 12 months, monthly monitoring with monthly reports.

Second: by Ms. Gainey

Vote: unanimous

Mr. Bayo accepted the settlement agreement with understanding that the suspension will begin on June 15, 2013 and the time to pay the fine and costs could be extended to one year.

### **Thomas Cherpak, D.D.S., Case No. 2011-19620, Settlement Agreement, (PCP Melzer)**

Dr. Cherpak was present and was represented by Allen Grossman, Esq. An amended two count administrative complaint filed February 26, 2013 alleged 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 involving failure to document root retention in treatment notes, 466.028(1)(x), F.S. of failure to meet minimum standards involving failure to remove root retained or refer patient to endodontist for evaluation and removal and by placing bone graft material in tooth socket before addressing the retained root tip.

Probable Cause Panel recommendation:

Reprimand, appearance before board, \$10,000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, minimum of level two in exodontias, minimum of level one in diagnosis and treatment planning, minimum of level one in grafting techniques, successfully complete laws and rules examination within one year and one biennium C.E. audit.

A settlement agreement was presented to the board with the following terms: fine of \$10,000 payable within 6 months, costs of \$3463.99, payable within 6 months, Level II in exodonture, Level I in records, Level I in diagnosis and treatment Planning within 12 months, reimbursement to patient, laws and rules exam within one year, respondent cannot serve as a qualified monitor until all obligations imposed by the final order are satisfied.

Following review, the following action was taken by the board:

Motion: by Board consensus vote to approve the settlement agreement

### **David Eaton, D.D.S., Case No. 2010-19331, Settlement Agreement (PCP Melzer)**

Dr. Eaton was present and was represented by Seth Burack, Esq. A two count administrative complaint filed alleged 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 involving no comprehensive periodontal exam or bone loss documentation; s. 466.028(1)(x), F.S. of failure to meet minimum standards involving fabrication of ill-fitting bridge, ill-fitting crowns, partial denture improperly fabricated.

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Probable Cause Panel recommendation:

Reprimand, appearance before board, \$10,000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, minimum of level one in crown and bridge, minimum of level one in record keeping, minimum of level one in diagnosis and treatment planning and minimum of level two in removable prosthetics, successfully complete laws and rules examination within one year and one biennium C.E. audit.

A settlement agreement was presented to the board with the following terms: letter of concern, fine of \$5000 payable within 12 months, costs capped at \$2000 payable within 12 months; completion of the following continuing education courses within 6 months of entry of final order: level 1 in record keeping with verified competency at dental school, level II in prosthodontics, level I in crown and bridge, level I in diagnosis and treatment planning, patient refund (completed per attorney), pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Dr. Thomas to accept the settlement agreement

Second: by Dr. Perdomo

Vote: motion fails on 4/4 vote

The alleged violations were restated and after discussion the board took the following action:

Motion: by Dr. Thomas to accept the settlement agreement

Second: by Dr. Perdomo

Vote: unanimous

### **Randy Furshman, D.D.S., Case No. 2012-15709, Settlement Agreement, (PCP Melzer)**

Dr. Furshman was present and was represented by Ziskind & Arvin, P.A., Esq. An administrative complaint filed February 19, 2013 alleged violations of s. 466.028(1)(mm), F.S. of advertisement of sedation dentistry or sleep dentistry to patients on website. Respondent does not hold a general anesthesia permit. Alleged violation of rule 64B5-4.002(7), F.A.C.

Probable Cause Panel recommendation:

Reprimand, appearance before board, \$5,000 fine, cost, minimum of level one in ethics, successfully complete laws and rules examination within one year and one biennium C.E. audit

A settlement agreement was presented to the board with the following terms: fine of \$2500 payable within 90 days, costs not to exceed \$1080.66 within 12 months; completion of a 3 hour college ethics course within 6 months of filing of final order, laws and rules exam within 1 year, respondent cannot serve as a qualified monitor until all obligations imposed by the final order are satisfied.

Following review, the following action was taken by the board:

Motion: to accept the settlement agreement by consensus vote of the Board

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Vote: unanimous

## **Bryan I. Gerstenberg, D.D.S., Case Nos. 2010-12435, 2010-16380, 2010-17715, and 2010-22542 Settlement Agreement (PCP Melzer, Thomas)**

Dr. Gerstenberg was present and was represented by Wilson Jerry Foster, Esq. Four administrative complaints filed May 2, 2011, December 14, 2011, and May 8, 2012, allege violations of s. 466.028(1)(z), F.S. of delegating professional responsibilities to a person who is not qualified by training, experience or licensure; s. 466.028(1)(II), F.S. for failure to register as a dispensing practitioner; s. 466.028(1)(m), F.S. for failure to keep written dental records and medical history records justifying the course of treatment involving several patients, failure to chart gingivectomy procedures, type of anesthetic used, no comprehensive periodontal exam; s. 466.028(1)(x), F.S. of failure to meet minimum standards involving failure to perform comprehensive periodontal examinations, use rubber dam during root canal therapy; s. 466.028(1)(t), F.S. of committing fraud, deceit or misconduct in the practice by upcoding the billing records or billing for procedures not performed,

Probable Cause Panel recommendations:

2010-12435

Reprimand, appearance before board, \$5,000 fine, cost, ethics course from an accredited college of dentistry, six month suspension – three months stayed, one year monitoring, successfully complete laws and rules examination within sixty days and one biennium C.E. audit.

2010-16380

Reprimand, appearance before board, \$1,500 fine, cost, ethics course from an accredited college of dentistry, successfully complete laws and rules examination within one year and one biennium C.E. audit.

2010-17715

Reprimand, appearance before board, \$90,000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, 6 months immediate suspension to remain in effect until he enrolls in the two year comprehensive program, one year monitoring once he gets back to practicing, successfully complete laws and rules examination within one year and one biennium C.E. audit

2010-22542

Reprimand, appearance before board, \$10,000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, minimum of level two in periodontics, minimum of level one in record keeping and minimum of level one in diagnoses and treatment planning, successfully complete laws and rules examination within one year and one biennium C.E. audit.

A settlement agreement was presented to the board with the following terms: reprimand, fine of \$40,000 payable within 24 months, costs not to exceed \$15,500 payable within 24 months; refund to each patient identified in these cases; suspension of license for 6 months stayed

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upon enrollment in 2 year comprehensive course, by the end of 2015 successfully complete the 2 year program at or through an accredited dental school, to include level II in diagnosis and treatment planning, level II in periodontics, level II in record keeping; in addition respondent shall complete 6 hours ethics within 24 months. Probation for one year with practice under indirect monitoring with approval by the Board of probation monitor with review of billing records and quarterly reports to Board; CE audit for next biennium, pass the laws and rules exam within 12 months, community service of 50 hours of non-dental service within 24 months. Respondent cannot serve as a qualified monitor until all obligations imposed by the final order are satisfied.

Following review, the following action was taken by the board:

Motion: by Dr. Gesek to reject the settlement agreement

Second: by Dr. Kochenour

Vote: unanimous

Motion: by Dr. Gesek to offer a counter settlement agreement to include reprimand, fine of \$40,000 payable within 24 months, costs capped at \$15,500 payable within 24 months; refund to each patient and/or insurance in these cases - Restitution amounts: \$11491.90 total for Patient LP: 2289.00, Patient CC: 1864.90, Patient BS: 684.00, Patient MS: 5464.00, Patient DM: 1240.00; suspension of license for two years; stayed upon enrollment in 2 year comprehensive course; successful completion of the 2 year program by the end of 2015 at or through an accredited dental school, to include verified competency in diagnosis and treatment planning, periodontics, record keeping, restorative dentistry, oral surgery; in addition respondent shall complete 3 hour college level ethics course within 12 months. Probation for two years with practice under indirect monitoring for the first 6 months- monthly; for the remainder of the two year period- quarterly, with approval by the Board of probation monitor with review of billing records and quarterly reports to Board; CE audit for next biennium, pass the laws and rules exam within 12 months, community service of 150 hours of non-dental service within 24 months. Respondent cannot serve as a qualified monitor.

Second: by Dr. Winker

Vote: unanimous

### **Ronnie Lynn Grundset, D.M.D., Case No. 2010-09778, Settlement Agreement (PCP Melzer)**

Dr. Grundset was present and was represented by Terese Latham, Esq. A four count administrative complaint filed December 16, 2011 alleged 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 involving failure to document pulse oximeter readings, failure to maintain adequate records when pediatric conscious sedation was administered including pulse oximeter readings, no calculation of local anesthetic dose for patient's weight; failure to document duration of procedure, complications, failure to provide written justification for over-sedating patient ; s. 466.028(1)(x), F.S. of failure to meet minimum standards involving over medication, failure to administer correct amount of sedative agent exceeding the maximum recommended dose, failure to properly treat respiratory emergency, failure to promptly call 911, failure to have or administer emergency response drugs including Flumazenil to reverse levels and

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effect of chloral hydrate all resulting in death of child; s. 466.028(1)(gg) of violation to administer anesthesia in manner which violates rules of board; s. 466.028(1)(ll), F.S. of failure to notify board within 48 hours of any mortality or other incident occurring in dentist's outpatient facility as required by Rule 64B5-14.006(1), F.A.C.

Probable Cause Panel recommendation:  
License revocation

A settlement agreement was presented to the board with the following terms:  
Reprimand, fine of \$20,000 within 12 months, costs of \$5939.17 payable within 12 months, completion of the following continuing education courses within 36 months of filing of final order: 7-12 hours with verified competency in airway management, emergency management, record keeping, risk management, 3 hour ethics course, revocation of anesthesia and pediatric conscious sedation permit; probation for 3 years; reimbursement for treatment; 100 hours of non-dental community service within 24 months, laws and rules within one year.

Ms. Latham stated that affidavits had been supplied to the Department dealing with the timing of the telephone calls to 911 that did not appear in the records. Dr. Grundset had surrendered her anesthesia permits, civil case resolved.

Following review, the following action was taken by the board:

Motion: by Dr. Thomas to table this case until the next board meeting to view any additional information that had not been provided to the Board

Motion: dies for lack of second

Motion: by Dr. Gesek to accept the settlement agreement

Second: by Dr. Kochenour

Vote: motion passed with Dr. Thomas opposed

### **Kevin O'Callaghan, D.M.D., Case No. 2011-00495, Settlement Agreement (PCP Melzer, Stevens)**

Dr. O'Callaghan was present and was represented by Edwin Bayo, Esq. Dr. Jerry Gropper, PRN, appeared with respondent. A three count administrative complaint filed September 26, 2012 alleged violations of s. 466.028(1)(t), F.S. of fraud, deceit or misconduct in the practice involving scheme to exchange prescriptions involving prescribing 91 prescriptions to Brian Hameroff, D.P.M. for 840 hydrocodone, 660 lorazepam and 1960 oxycodone. Respondent received from Dr. Hameroff 120 prescriptions for controlled substances -480 hydrocodone, 1230 lorazepam and 2620 oxycodone, exchanging prescriptions for 3 years; s. 466.028(1)(p), F.S. of prescribing, procuring, dispensing, administering controlled substances other than in the course of treatment; and s. 466.028(1)(s), F.S. of inability to practice with reasonable skill and safety by reason of impairment.

Probable Cause Panel recommendation:

## FIRST DRAFT

Reprimand, appearance before board, \$30,000 fine, cost, six month suspension or until he appears before the board, successfully complete laws and rules examination within one year and one biennium C.E. audit.

A settlement agreement was presented to the board with the following terms: reprimand, fine of \$7500 payable within 6 months, costs of \$6999.91 payable within 6 months; suspension until remaining term of PRN contract, stayed as long as compliant with PRN, probation concurrent with term of PRN contract, pass the laws and rules exam within 12 months. Respondent cannot serve as a qualified monitor until all obligations imposed by the final order are satisfied.

Following review, the following action was taken by the board:

Motion: by Dr. Thomas to accept the settlement agreement

Second: by Dr. Gesek

Vote: unanimous

### **Miriam R. Rubano, D.D.S., Case Nos. 2012-01856, 2012-08389, Settlement Agreement (PCP Gesek)**

Dr. Rubano was present and was not represented by counsel. An Order of Emergency Suspension of License was issued by State Surgeon General and filed on October 15, 2012. On February 5, 2012, law enforcement officers arrested Dr. Rubano for two counts of battery on a law enforcement officer, two counts of cruelty toward a child, leaving the scene of a crash involving damage to property. Dr. Rubano reported herself to Professionals Resource Network for evaluation and contract was recommended. She did not execute contract. An Amended Administrative Complaint filed on February 28, 2013 alleges violation of s. 466.028(1)(s), F.S. of inability to practice with reasonable skill and safety due to mental condition or drug use and s. 466.028(1)(q), F.S. of prescribing, procuring, dispensing or administering any medicinal drug to herself regarding Tylenol with Codeine #3.

Ms. Debbie Troupe, PRN and Dr. Jerry Gropper, PRN were present to discuss this matter.

Probable Cause Panel recommendation:

Suspend until she is in compliance with PRN and appears before the board or revocation if she is non-compliant.

A settlement agreement was presented to the board with the following terms: reprimand, fine of \$2500 payable within 12 months of filing of order reinstating license to practice; costs not to exceed \$14,992.30 payable within 1 year of order to reinstate license; suspension until demonstration to Board the ability to practice dentistry with reasonable skill and safety, probation with specified requirements for 2 years with monitor following suspension, pass the laws and rules exam within 12 months. Respondent cannot serve as a qualified monitor until all obligations imposed by the final order are satisfied.

Motion: by Dr. Thomas to reject the settlement agreement

Second: by Ms. Gainey

Vote: unanimous

## FIRST DRAFT

Motion: by Dr. Thomas to offer a counter settlement agreement to include reducing the costs to \$5,000

Second: Ms. Cabanzon

Motion withdrawn

Motion: by Ms. Gainey to offer a counter settlement to suspend the dental license until she is compliant with PRN and appears before the board to reinstate the license or revoke the license if she is non-compliant.

Second: by Dr. Melzer

Vote: unanimous

### **Jonathan Royal, D.D.S., Case No. 2009-14413, Informal Hearing (PCP Melzer, Stevens, Thomas, Gesek)**

Dr. Royal was present and was represented by Dennis Vandenberg, Esq. An amended administrative complaint filed September 27, 2012 alleged violations of s. 466.028(1)(x), F.S. of failure to meet minimum standards involving replacement of old bridge, root canal therapy and prep for temporary and permanent crown. A malpractice suit was filed and after a trial, the jury awarded plaintiff \$64,000 in damages.

Probable Cause Panel recommendation:

Reprimand, appearance before board, \$10,000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, ethics course, one (1) year remedial course, successfully complete laws and rules examination within one year and one biennium C.E. audit.

Following review, the following action was taken by the board:

Motion: by Dr. Winker to adopt the findings of fact contained in the administrative complaint

Second: by Dr. Kochenour

Vote: unanimous

Motion: by Dr. Winker to adopt the conclusions of law and find that the conclusions of law constitute a violation of the practice act as alleged in the Administrative Complaint

Second: by Dr. Kochenour

Vote: unanimous

Motion: by Dr. Winker to impose the following discipline: letter of concern, \$5000 fine, costs of \$5,627.25, continuing education courses to verified competency to be completed within one year as follows: Level I in Crown and Bridge and Level I in Recordkeeping, successfully complete laws and rules examination within one year

Second: by Dr. Kochenour

Vote: unanimous

A Motion to Assess Costs of \$5,627.25 was presented to the Board by the Department.



# FIRST DRAFT

## **Mark Ramey Skaff, D.D.S., Case No. 2011-04687, Informal Hearing (PCP Melzer)**

Dr. Skaff was present and was not represented by counsel. An administrative complaint filed December 16, 2011 alleged violations of s. 466.028(1)(II), F.S. by violating 456.072(1)(hh), F.S. of dismissal from PRN due to non-compliance, not completing drug treatment or alcohol treatment program. Respondent executed an agreement to voluntarily withdraw from practice with PRN on April 26, 2007.

Probable Cause Recommendation: Recommended penalty – revocation

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

Motion: by Dr. Thomas to adopt the findings of fact contained in the administrative complaint  
Second: by Dr. Gesek  
Vote: unanimous

Motion: by Dr. Winker to adopt the conclusions of law and find that the conclusions of law constitute a violation of the practice act as alleged in the Administrative Complaint  
Second: by Dr. Gesek  
Vote: unanimous

Dr. Groper has advised that a contract was recently mailed to Dr. Skaff. Dr. Skaff indicated he has signed the contract however it is not confirmed that PRN has received it.

Motion: by Dr. Gesek to continue suspension until he complies with PRN and appears before the board with a recommendation to reinstate license  
Second: by Dr. Thomas  
Vote: motion passes with Dr. Kochenour opposed

A Motion to Assess Costs of \$1,791.45 was presented to the Board by the Department.  
Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to waive the costs  
Second: by Dr. Gesek  
Vote: motion passes with Dr. Winker opposed

## **Kristen Johnson, R.D.H., Case No. 2012-17163, Voluntary Relinquishment (PCP Melzer)**

Ms. Johnson was not present and was not represented by counsel. A two count administrative complaint filed February 12, 2013 alleged violations of s. 456.072(1)(c), F.S. of being convicted or found guilty or entering a plea of nolo contendere regarding conviction of possession of cocaine and drug paraphernalia and possession of controlled substances

## FIRST DRAFT

dilaudid and hydromorphone without a prescription, and s.456.072(1)(x), F.S. failure to report to the board within 30 days after conviction.

Probable Cause Panel recommendation: revocation

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

Motion: by Dr. Gesek to accept the voluntary relinquishment

Second: by Dr. Winker

Vote: unanimous

### **John L. Ricks, Jr., D.D.S., Case No. 2012-14352, Voluntary Relinquishment (PCP Waived)**

Dr. Ricks was not present and was not represented by counsel. Alleged violation of s. 466.028(1)(h), F.S. being employed by any corporation, organization, group or person other than a dentist concerning employment by PrevMed and or Mid-America Health which are non-dentist owned. Dr. Ricks is no longer practicing and has signed a Voluntary Relinquishment of License.

Probable Cause Waived

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

Motion: by Dr. Gesek to accept the voluntary relinquishment

Second: by Dr. Winker

Vote: unanimous

### **Gustavo Borges, D.D.S., Case No. 2007-35238, Recommended Order (PCP Melzer, Thomas)**

Dr. Borges was not present and was not represented. On May 17, 2007, U.S. Attorney for the Southern District filed a one-count Information against Respondent alleging that he did knowingly receive child pornography and was sentenced to serve seventy-one months in prison followed by 5 years of supervised release and \$5000 fine. Respondent was released from prison on November 27, 2012 and classified as a sexual offender.

Administrative law judge Todd R. Resavage issued the recommendation on March 11, 2013 that the Board of Dentistry enter a final order finding Dr. Borges guilty of violating s. 466.028(1)(II), F.S. by violating section 456.072(1)(c), F.S. and revoking his license to practice dentistry.

Two exceptions were filed by respondent's attorney with responses to exceptions by the Department:

Exception 1: The administrative law judge did not consider evidence or give proper weight to evidence

# FIRST DRAFT

Motion: by Dr. Gesek to reject the exception  
Second: by Dr. Stevens  
Vote: unanimous

Exception 2: Concerning the findings of fact and conclusions of law made by the administrative law judge

Motion: by Dr. Gesek to reject the exception  
Second: by Dr. Kochenour  
Vote: unanimous

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

Motion: by Dr. Gesek to accept the findings of fact in the recommended order  
Second: by Dr. Kochenour  
Vote: unanimous

Motion: by Dr. Gesek to accept the conclusions of law in the recommended order  
Second: by Dr. Kochenour  
Vote: unanimous

Motion: by Dr. Gesek to accept the penalty recommendation of the administrative law judge to enter final order finding Dr. Borges guilty of violating section 466.028(1)(II) by violation of 456.072(1)(c), F.S. and revoke license  
Second: by Dr. Winker  
Vote: unanimous

A Motion for costs of was prepared however the Department asked that the motion could be withdrawn. Following discussion, the board took the following action:

Motion: by Dr. Gesek to forfeit the costs  
Second: by Dr. Stevens  
Vote: motion passes with Dr. Winker opposed

## **Steven Courten, D.D.S., Case No. 2009-08825, Recommended Order (PCP Gesek, Thomas)**

Dr. Courten was present and he was not represented by counsel. On December 14, 2012, the Department issued an amended Administrative Complaint against Dr. Courten and referred the matter to Division of Administrative Hearings. The Administrative law judge recommended that the Board of dentistry enter a final order finding respondent guilty of the record-keeping violations and the standard of care violations and issue a letter of concern, remedial education related to recordkeeping, endodontics and ethics, fine of \$2500 issued on March 26, 2013.

Respondent filed exceptions/hand written comments to the recommended order found in addendum pgs. 68-71. Comments not filed timely were reviewed by the Board.

## FIRST DRAFT

Mr. Flynn advised the board to continue the case to the next board meeting after Dr. Courten stated he only received notice 10 days ago and his attorney could not be present due to a conflict.

### **PETITIONS**

#### **Petition for Declaratory Statement**

#### **Healthy Kids One More Child Foundation**

Mr. Allen Grossman, Esq., and Dr. Davis appeared before the Board to request a declaratory statement filed April 12, 2013 regarding Arizona not-for-profit corporation with purpose to provide free and reduced fee dental care to Medicaid eligible and otherwise uninsured and underserved children in school based prevention programs. Petitioner will contract with Florida licensed dentists to provide dental services in schools to include dental examinations including radiographs, sealants, prophylaxis and fluoride and referral to office of licensed dentist if necessary. Dental check- up offered twice each year.

Petitioner is requesting that Board of Dentistry issue a declaratory order finding that there is no objection to Florida Medicaid Program allowing reimbursement for care being provided without a mobile dental unit.

The declaratory statement is asking if screenings, sealants, prophylaxis and fluoride can be provided without the services being performed in a mobile dental unit.

Mr. Grossman indicated that he withdraws the question regarding reimbursement from Medicaid. Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to decline making a statement until AHCA states the requirement

Second: by Dr. Melzer

Vote: motion passes with Ms. Gainey, Ms. Cabanzon, Dr. Perdomo and Dr. Winker opposed

Motion: by Dr. Gesek to require a mobile dental unit

Second: motion dies for lack of second

Mr. Grossman waived the ninety day requirement to rule on the petition. Mr. Grossman will work with board counsel – contact AHCA for additional information.

### **APPLICATION REVIEW/APPEARANCES**

#### **Request for Approval of Training Program/Residency Permit Application**

#### **Miami Oral and Maxillofacial Surgery, Miami, FL**

Program director – Joseph P. McCain, DMD, primary hospital – Baptist Health System Hospitals

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

Motion: by Dr. Gesek to approve the residency program

Second: by Dr. Perdomo

# FIRST DRAFT

Vote: unanimous

## **Reem Hamdy Hossameldin, B.D.S., Applicant for Residency Permit**

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

Motion: by Dr. Melzer to approve the application

Second: by Dr. Perdomo

Vote: unanimous

## **David Goldston, D.D.S., Case No. 2011-06830, Required Appearance with Proposed Monitor for Formal Approval**

Dr. Goldston was present. Following discussion, the following action was taken by the Board:

Motion: by Dr. Melzer to ratify the monitor approval

Second: by Dr. Thomas

Vote: unanimous

## **Perry Ekstrand, D.D.S., Case No. 2010-16076, Request to Reinstate Dental License and Extension of Time for Costs Payment**

Dr. Ekstrand was present. Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to reinstate the dental license upon completion of 30 day course at Nova and UF operative, C&B, endodontics and to complete all required continuing education  
Motion died for lack of second

Motion: by Dr. Gesek to reinstate the dental license and 6 months to complete the Laws and Rules exam and payment of costs

Second: by Dr. Melzer

Vote: motion passes with Dr. Winker opposed

## **Richard Lipman, D.D.S., Case No. 2011-06606, Request to Reinstate Dental License**

Dr. Lipman was present and was represented by Richard Leydig, Jr. Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek to reinstate the dental license

No second

Motion: by Dr. Melzer to suspend license until he completes the one year comprehensive dental course

No second.

Motion: by Dr. Melzer to reinstate the license

Second: by Dr. Thomas

Vote: unanimous

# FIRST DRAFT

## **Mark Maggert, D.D.S., Case No. 2010-05528, Required Appearance for Formal Approval of Proposed Monitor**

Dr. Maggert was present with his monitor. Dr. Maggert has business relationship with monitor. Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to allow this monitor to continue for 30 days in which time Dr. Maggert will locate a new monitor and the appearance is waived.

Second: by Dr. Gesek

Vote: unanimous

## **Jan Kaplan, D.D.S., Case No. 2008-26998, Second Request for Extension of Time to Pay Fine and Costs**

The compliance officer requested that this item be removed from the agenda prior to the meeting.

## **Robert Orta, D.D.S., Case No. 2009-19394, Required Appearance for Formal Approval of Proposed Monitor**

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

Motion: by Dr. Gesek to approve the monitor

Second: by Ms. Gainey

Vote: unanimous

## **Kelly L. Harris, D.M.D., Applicant for Conscious Sedation Permit**

Dr. Harris was present. Following discussion, the board took the following action:

Motion: by Dr. Thomas to allow Dr. Harris to withdraw her application

Second: by Dr. Melzer

Vote: unanimous

## **OLD BUSINESS**

None

## **NEW BUSINESS**

None

## **ADJOURNMENT**

The meeting was adjourned at 1:52 p.m.