

REVISED DRAFT (9/13/13)

**BOARD OF DENTISTRY
GENERAL BUSINESS MEETING MINUTE SHELL
ROSEN PLAZA HOTEL
9700 INTERNATIONAL DRIVE
ORLANDO, FL 32819
(407) 996-9700
AUGUST 22, 2013 4:00 P.M
AUGUST 23, 2013 7:30 A.M.**

CALL TO ORDER/ROLL CALL

The meeting was called to order at 4:00 p.m. by Dr. Gesek, Chair and recessed at 5:40 p.m. The meeting resumed at 7:30 am and was adjourned at 1:00p.m. Those present for all or part of the meeting included the following:

Members present:

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.
Leonard Britten, D.D.S.
Tim Pyle
Anthony Martini
Angela Sissine, R.D.H.

Staff present:

David Flynn, Board Counsel
Sue Foster, Executive Director
Adrienne Rodgers, Esq., Asst. General Counsel, PSU
Cindy Ritter, Program Administrator
Sharmin Hibbert, Section Manager, PSU
Monique Bryan, Asst. General Counsel, PSU
Cindy Green, American Court Reporting, (407) 896-1813

Dr. Gesek welcomed the new members to the Board. He requested that Ms. Sissine 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.

REVIEW AND APPROVAL OF MINUTES

The minutes of the May 17, 2013 meeting were reviewed.

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

Motion: by Dr. Kochenour to approve the minutes

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Second: by Dr. Gesek
Vote: unanimous

RULES WORKSHOP [Thursday, August 22, 2013]

Draft Rule 64B5-14.0038, FAC, Use of Qualified Anesthetist

Attorney Glenn Thomas requested the rule development workshop on behalf of the Florida Association of Nurse Anesthetists (FANA). The rule workshop was noticed in Vol. 39, No. 104, of the May 29, 2013 Florida Administrative Register. Mr. Thomas stated concerns that the proposed rule placed additional requirements on a certified registered nurse anesthetist. Mr. Thomas stated that he was not aware of regulations concerning dentists supervising certified registered nurse anesthetists. Mr. Thomas recommended an amendment to rule 64B5-14.0032, FAC, to include certified registered nurse anesthetists as well as physician anesthesiologists.

Mr. Flynn stated that pursuant to a 1986 ruling, certified registered nurse anesthetists should not administer sedation in an outpatient dental office unless the dentist holds a sedation permit.

Jerome Hoffman, Esq., Holland & Knight, representing the Florida Society of Anesthesiologists, addressed the Board concerning this rule as well as Hector Vila, Jr., M.D., Pediatric Dental Anesthesiology Association, and Ron Watson, lobbyist, Florida Dental Association.

The board approved the following draft at the May 17, 2013 meeting:

64B5-14.0038 Use of a Qualified Anesthetist.

In an outpatient dental office, and pursuant to section 466.002(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.

Rulemaking Authority: 466.004(4), 466.017 FS. Law Implemented: 466.002(2), 466.017 FS. History- New .

Motion: by Dr. Thomas to keep the rule language as drafted
Second: by Dr. Perdomo
Vote: unanimous

Motion: by Dr. Thomas that this will not negatively impact small businesses
Second: by Dr. Kochenour
Vote: unanimous

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Request for Rules Workshop

Mr. Glen Thomas, Esquire, representing the Florida Association of Nurse Anesthetists, (FANA) emailed the board office on June 11, 2013 and requested a Rule Development Workshop for Rule 64B5-14.0038, FAC.

Comments submitted by Florida Association of Nurse Anesthetists

This is a letter from Glenn E. Thomas representing the FANA, an organization of over 3000 certified registered nurse anesthetists. The members are objecting to limitation of practice Included is research information regarding CRNA's record of safety and cost effectiveness of using CRNA's vs. anesthesiologists. Legal objections are also cited in this letter.

ANESTHESIA DISCUSSION [Thursday, August 22, 2013]

Proposed Amendment to Rule 64B5-14.003, FAC

Proposed Amendment Approved by the Anesthesia Committee on June 18, 2013:

64B5-14.003 Training, Education, Certification, and Requirements for Issuance of Permits.

(1) General Anesthesia Permit.

(a) through (e) No Change

(2) Conscious Sedation Permit.

(a) through (f) No Change

(3) Pediatric Conscious Sedation Permit.

(a) A permit shall be issued to a dentist authorizing the use of pediatric conscious sedation at a specified practice location or locations on an outpatient basis for dental patients provided such dentist:

1. Has received formal training in the use of pediatric conscious sedation. This formal training program shall be sponsored by or affiliated with a university, teaching hospital or ~~other facility approved by the Board of Dentistry~~ or part of the undergraduate curriculum of an accredited dental school; and

2. Is certified by the institution where the training was received to be competent in the administration of pediatric conscious sedation. This certification shall specify the type, the number of hours, the number of patients treated and the length of training. The minimum number of didactic hours shall be sixty, which must include four (4) hours of airway management. Clinical training shall include personal administration management of sedation for at least twenty patients including supervised training, management of sedation, clinical experience and demonstrated competence in airway management of the compromised airway. The program must certify that a total of three (3) hours of clinical training was dedicated to hands-on simulated competence in airway management of the compromised airway; and

3. Is competent to handle all emergencies relating to pediatric conscious sedation. A dentist utilizing pediatric conscious sedation shall maintain a properly equipped facility for the administration of pediatric conscious sedation, staffed with supervised assistant/dental hygienist personnel, capable of reasonably handling procedures, problems, and emergencies incidental thereto. The facility must have the equipment capability of delivering positive pressure oxygen ventilation. Administration of pediatric conscious sedation requires at least two individuals: a dentist, and an auxiliary trained in basic cardiac life support. It shall be incumbent upon the operating dentist to insure that the patient is appropriately monitored.

(b) A dentist utilizing pediatric conscious sedation and his assistant/dental hygienist personnel shall be certified in an American Heart Association or American Red Cross or equivalent agency sponsored cardiopulmonary resuscitation course at the basic life support

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level to include one ~~person~~ man CPR, two ~~person~~ man CPR, infant resuscitation, and obstructed airway with a periodic update not to exceed two years. Starting with the licensure biennium commencing on March of 2000, a dentist and all assistant/dental hygienist personnel shall also be trained in the use of either an Automated External Defibrillator or a defibrillator and electrocardiograph as part of their cardiopulmonary resuscitation course at the basic life support level. In addition to CPR certification, a dentist utilizing pediatric conscious sedation must be currently trained in ACLS (Advanced Cardiac Life Support), PALS (Pediatric Advanced Life Support), or a course providing similar instruction which has been approved by the Board. An entity seeking approval of such a course shall appear before the Board and demonstrate that the content of such course and the hours of instruction are substantially equivalent to those in an ACLS or PALS course.

(c) through (d) No Change.

(4) through (5) No Change.

Rulemaking Authority 466.004(4), 466.017(3), (6) FS. Law Implemented 466.017(3), (5), (6) FS. History—New 1-31-80, Amended 4-20-81, 2-13-86, Formerly 21G-14.03, Amended 12-31-86, 11-8-90, 2-1-93, Formerly 21G-14.003, Amended 12-20-93, Formerly 61F5-14.003, Amended 8-8-96, 10-1-96, Formerly 59Q-14.003, Amended 2-17-98, 12-20-98, 5-31-00, 6-7-01, 11-4-03, 6-23-04, 6-11-07, 2-8-12, 8-16-12 (1)(a)-(f), 8-16-12 (5), _____.

Motion: by Dr. Thomas to approve the draft

Second: by Dr. Perdomo

Vote: unanimous

Motion: by Dr. Winker that these changes will not have an adverse impact on small business

Second: by Dr. Perdomo

Vote: unanimous

Motion: by Dr. Thomas that will not have adverse impact or costs over \$200,000 in the aggregate

Second: by Dr. Winker

Vote: unanimous

Recommendations from the Council on Dental Hygiene Sedated Patient and the Use of Local Anesthesia

The Council's recommendation was to accept the proposed rule from the Florida Dental Hygiene Association identifying nitrous oxide as an analgesic and not a sedative for the purpose of local anesthetic administration by a certified registered dental hygienist.

Dr. Gesek read into the record rule draft 64B5-14.002, adding a new subsection (9).

Motion: by Dr. Stevens to send the draft rules to the Council on Dental Hygiene to review and to ask the Council to reconsider their approval of the FDHA language.

Second: by Dr. Winker

Vote: unanimous

The board discussed vacating vote in May however board declined to reconsider.

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Course Requirements for Certification in Local Anesthesia

The Council's recommendation was to allow the original motion to stand that was taken at the full board meeting on August 12, 2012. This motion would allow the statute to govern the curriculum, the schools could determine their own breakdown using the statutory guidelines, and the board would not need to promulgate additional rules regarding the local anesthesia coursework for dental hygienists.

Motion: by Dr. Thomas to accept the Council's recommendation
Second: by Ms. Cabanzon
Vote: motion passes with Dr. Winker opposed

Sedation Basics, Prepared By David Flynn, Board Counsel Draft – A Guide for the Use of Sedation in the Practice of Dentistry: The Very Basics by David Flynn, Esquire

Mr. Flynn explained the guide that he developed to be a basic outline covering areas of the sedation rules that have recently been updated. This guide gives a brief outline of each type of sedation permit: general anesthesia, conscious sedation and pediatric conscious sedation.

Chapter 64B5-14, Anesthesia, FAC

A current copy of the rule chapter was provided for reference.

Email with Rule Drafts for Rule 64B5-14.010, FAC, from Dr. Barry Setzer

This is information from Dr. Barry Setzer, Anesthesia Committee Advisor, following the June 18, 2013 Anesthesia Committee telephone conference call.

Dr. Barry Setzer, Florida Association of Pediatric Dentists, addressed the board concerning pediatric dentists with pediatric conscious sedation permits treating patients over the age of 18 and conscious sedation permit holders treating children.

Dr. Setzer asked the board to consider grandfathering all sedation permits as they are and issue future permit applicants

Motion: by Dr. Gesek to allow pediatric and conscious sedation permit holders to decide whether they may wish to change the permit at renewal
Second: by Dr. Thomas
Vote: unanimous

It was determined that Dr. Setzer's draft would be referred to the Anesthesia Committee.

Letter from Hector Vila, Jr., M.D.

Dr. Vila, an anesthesiologist, provides office based dental anesthesia to children and special needs patients. He recommends that the board temporarily suspend the requirement for amiodarone, vasopressin and adenosine in offices where pediatric sedation is administered orally.

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

Motion: by Dr. Thomas to adopt the language –page 25 of addendum with change regarding 48 hour advance notice prior to equipment inspection.
Second: by Dr. Winker
Vote: unanimous

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Motion: by Dr. Thomas that this will not negatively impact small businesses
Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Gesek to send Dr. Vila's proposal to temporarily suspend the requirement for pediatric dentists to maintain above cited drugs to next Anesthesia Committee meeting
Second: by Dr. Thomas
Vote: unanimous

Email from Dr. Betty Klement – Discussion of Minimal Sedation Requirements/Guidelines

Dr. Klement, Board Anesthesia Committee advisor, appeared before the board and requested that the Board consider creating guidelines for the use of minimal sedation. She included the minimal sedation guidelines from the American Dental Association for the Board's review.

Motion: by Dr. Stevens to refer to Anesthesia Committee
Second: by Dr. Gesek
Vote: unanimous

Mr. Flynn advised that there were several permissive words that must be amended in the draft.

Information regarding Nitrous Oxide

Dr. Gesek, Board Chair, requested that staff include this information regarding nitrous oxide administration for the Board member's review.

REPORTS

Board Counsel

Rules Report

Mr. Flynn reviewed the current rules report with the Board.

Dr. Clive Rayner advised that he had done research and nitrous oxide is anxiolytic, but also is a sedative. He brought several text books for reference including an article authored by Chair Gesek.

Ron Watson, lobbyist, Florida Dental Association, agreed with Dr. Rayner and asked that the board reconsider their vote finding that nitrous oxide is not a sedative for the purposes of local anesthesia.

Dr. Stevens stated there are some antihistamines that create a sedative effect. Nitrous makes patients less sensitive to their teeth.

Dr. Matthew Dennis advised the board that the University of Florida is currently working on the development of a four hour airway management course composed of 2 hours of didactic training, one hour of simulated emergency care, and one hour hands-on.

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Applications for Review

Minor revisions were made to some applications for consistency with the upcoming online application process. Some of these changes include, changing the DOH logo, updating website address, change in "oath" section regarding the exam refund, etc.

Dental Licensure Application

Motion: by Dr. Thomas to accept changes
Second: by Dr. Winker
Vote: unanimous

Dental Hygiene Licensure Application

Motion: by Dr. Thomas to accept changes
Second: by Dr. Kochenour
Vote: unanimous

Application for Temporary Certificate

A question was added regarding the clinical exam history.

Motion: by Dr. Thomas to accept changes
Second: by Dr. Winker
Vote: unanimous

Application for Credentials Review – Dental Hygiene Licensure

Section 3 of the application regarding the National Board Exam was added to assist staff with determination/verification of the national exam that was passed by the dental hygienist or dentist.

Motion: by Dr. Thomas to accept changes
Second: by Dr. Kochenour
Vote: unanimous

Draft Rule 64B5- _____ Public Comment

This law relating to public meetings was passed in the last legislative session and will be effective October 1, 2013. All of the boards are required to promulgate a rule to implement this new law. Dr. Gesek requested that Mr. Flynn bring a draft of this rule to the next meeting.

Anesthesia Committee Meeting, June 18, 2013 Conference Call

Dr. Gesek reported on the following actions and clarifications regarding the anesthesia committee meeting:

The Committee reviewed a letter from Dr. Kim Jernigan, FDA President, regarding rule 64B5-14.002(9), Prohibitions. She is requesting, on behalf of the Florida Dental Association, that a dental hygienist be permitted to administer local anesthesia to only non-sedated patients.

The committee recommended that the proposed rule from the Florida Dental Association should be sent to the Council on Dental Hygiene for review and then placed on the August,

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2013 board meeting agenda. The board may need to review a previous motion from the May meeting and discuss possibly vacating this motion.

The committee approved changes to Rule Draft - 64B5-14.003, FAC, Training, Education, Certification, and Requirements for Issuance of Permits. This rule text is located under Agenda Item IV.A.

Dr. Barry Setzer, on behalf of the Pediatric Dental Association discussed Rule 64B5-14.0032(6) Equipment – regarding the equipment being available for inspection **and** the dentist supplying an inspection of the equipment report by a licensed health care risk manager. Following discussion, the Committee agreed that there should be a change from “and” to “or”. Mr. Flynn will provide a rule draft for the August board meeting.

There was also discussion regarding the pediatric conscious sedation permit vs. the conscious sedation permit and questions regarding transfer of permits. There was also discussion regarding changing this to one permit, and what is the rationale for changing permits since dentists holding conscious sedation may administer pediatric conscious sedation. Dr. Melzer requested that any comments be sent to the Board office and there will be additional discussion on this at the August board meeting.

Dr. Stevens reviewed her proposed changes made to Rules 64B5-14.008, 14.009 and 14.010, FAC. She made these changes for consistency and standardization.

Dr. Haddix asked for clarification regarding the amount of classroom vs. online didactic training for dental hygienists taking the local anesthesia course. It was his understanding that 50% of the coursework had to be face to face and he had observed discrepancies with various courses around the state. Dr. Melzer asked that the staff research minutes to see what action was taken. Dr. Erbs stated the spirit of the statute was to have half of the didactic training in the classroom.

Dr. Melzer stated that he would like to a change in the rules to require a mini-residency of perhaps an 8 week course in anesthesia for conscious sedation permit applicants. Also, with the ACLS and PALS requirement, he does not see the need for basic CPR training.

Council on Dental Hygiene, August 6, 2013 Conference Call

Ms. Cabanzon reported on the following actions taken by the Council:

The Council's recommendation was to accept the proposed rule from the Florida Dental Hygiene Association identifying nitrous oxide as an analgesic and not a sedative for the purpose of local anesthetic administration by a certified registered dental hygienist.

The Council also recommended that the Board allow the original motion to stand that was taken at the full board meeting on August 12, 2012. This motion would allow the statute to govern the curriculum, the schools could determine their own breakdown using the statutory guidelines, and the board would not need to promulgate additional rules regarding the local anesthesia coursework for dental hygienists.

Executive Director

Budget Reports

The budget report ending March 31, 2013 of expenditures by function was included for the board's review.

Ratification of Lists

Motion: by Mr. Martini to approve the list

Second: by Dr. Winker

Vote: unanimous

Chairman

None

Vice-Chairman

None

Board Members

Dr. Stevens briefly discussed concerns with digital records and concerns with elder care abuse. She stated that there needed to be training with probable cause members regarding digital records.

Dr. Winker stated that there needed to be reporting of fraud by dental staff, dental hygienists, dental assistants, dental radiographers regarding some of the cases he has reviewed recently.

ITEMS FOR TOPIC DISCUSSION

Email from Rhina Delgado

Ms. Delgado has sent numerous emails to representatives regarding her husband, a foreign-trained dentist licensed in California. She is requesting a waiver for him to work in Florida.

The Board reviewed the letter and the following action was taken:

Motion: by Dr. Gesek that this would require a change in the law

Second: by Dr. Winker

Vote: unanimous

FOR YOUR INFORMATION

OIG Advisory Opinion 08-19

Unlicensed Activity Articles

SB 248 Relating to Treatment Programs for Impaired Licensees And Applications

Unlicensed Activity Report

NERB Meeting, June 2013

A list of changes to the ADEX Examinations for 2014 was included in the agenda. This included the local anesthesia computer-based exam component with the CSCE and Patient treatment exam for ADEX.

North Carolina Dental Board Suit

Press Release, Joint Investigation Leads to Arrests in Martin County & Related Article

Unlicensed Activity News Clips

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DISCIPLINARY PROCEEDINGS [Friday, August 23, 2013, 8:00 a.m.]

Bianca Ana Mendez Viera, D.M.D., Case No. 2010-18990, Settlement

Dr. Viera was present and was represented by Randolph Collette, Esq. An administrative complaint filed April 1, 2012 alleged violations of s. 466.028(1)(x), F.S. of failure to meet minimum standards involving an inadequate radiograph before an extraction.

Probable Cause Panel recommendation:

Reprimand, appearance before board, \$15,000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, minimum of level one in treatment planning, minimum of level two in record keeping, minimum of level one in periodontics, and minimum of level two in endodontics, 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 of \$2703.27 payable within 12 months; level 1 in diagnosis and treatment with verified competency at dental school, CE audit for next biennium, pass the laws and rules exam within 12 months.

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

Motion: by Dr. Thomas to reject the settlement agreement
Second: by Dr. Perdomo
Vote: unanimous

Motion: by Dr. Thomas to dismiss the case
Second: by Dr. Gesek
Vote: unanimous

David T. Turbyfill, D.M.D., Case 2013-03889, Settlement, PCP Thomas

Dr. Turbyfill was present and was represented by Ed Bayo, Esq. An emergency restriction order was issued on April 2, 2013. An administrative complaint filed April 22, 2013 alleged violations of s. 466.028(1)(mm), F.S. of violation of provision of Chapter 466 or 456, F.S. Section 466.027, F.S. prohibits sexual misconduct.

Probable Cause Recommendation for Penalty

The Panel recommended an emergency suspension and a PRN evaluation.

A settlement agreement was presented to the board with the following terms: letter of concern, fine of \$10,000 payable within 30 days, costs not to exceed \$4630.28 payable within 30 days, temporary restrictions under the Emergency Restriction Order to remain in place until respondent cleared by Board to return to practice based upon compliance with PRN contract; upon return to practice, permanent restriction to have monitor in room when performing procedures under general anesthesia.

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

Motion: by Dr. Stevens to reject the settlement agreement
Second: by Dr. Perdomo
Vote: motion passes with Dr. Kochenour opposed

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Motion: by Dr. Stevens to offer a counter-settlement agreement to include a Letter of Concern, fine and costs as included in original settlement, probation and revocation of anesthesia permit.

Motion dies for lack of a second

Motion: by Dr. Perdomo to amend the settlement agreement to include monitoring when using conscious sedation and 9 months to pay the fines and costs. All monitoring must be provided by a licensed health care provider.

Second: by Dr. Winker

Vote: motion passes with Ms. Cabanzon opposed

Mr. Bayo returned later in the meeting and requested an extension to pay fines and costs. The board took the following action:

Motion: by Dr. Gesek to allow 9 months to pay the fines and costs.

Second: by Dr. Perdomo

Vote: Unanimous

Jose Alberto, D.D.S., Case No. 2011-15481, Settlement, PCP Thomas

Dr. Alberto was not present. Board requested that this case be continued to the November meeting with appearance required.

Timothy James Morris, D.D.S., Case No. 2010-20479, Settlement

Dr. Morris was not present and was represented by Stuart Cohen, Esquire. An amended administrative complaint filed March 13, 2013 alleged violations of s. 466.028(1)(x), F.S. of failure to meet minimum standards involving dental diagnosis and treatment that resulted in a claim of negligent conduct and settlement of claim for \$60,000.

Probable Cause Recommendation for Penalty

Reprimand, appearance before board, \$10,000 fine, cost, reimbursement to the patient of fees paid to the respondent for procedures involved in complaint, minimum of level one in record keeping, minimum of level two in diagnosis and treatment planning and minimum of level two in crown and bridge, 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, \$5,000 fine and costs of \$7,183, payable within 12 months of entry of final order, respondent is restricted from performing the dental procedures subject to competency achievement until remediation is completed successfully as follows: completion of remedial education at or through an accredited college of dentistry or Board approved course provider within 12 months: Level II in Crown and Bridge, Level II in Diagnosis and Treatment, Level I in Records, completion of laws and rules exam. No patient refund is included in the settlement because the patient has received compensation through the closed civil claim for cost and damages.

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

Motion: by Dr. Thomas to reject the settlement

Second: by Dr. Kochenour

Vote: unanimous

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Motion: by Dr. Thomas to suspend license if he does not attend November board meeting
Second: by Dr. Perdomo
Vote: motion failed by vote of 5 to 6 opposed to motion

Motion: by Dr. Gesek to revoke license
Second: by Dr. Winker
Vote: unanimous

Harold E. Kirksey, D.D.S., Case No. 2011-10531, Settlement, PCP Stevens

Dr. Kirksey was present and was represented by Jon Pellett, Esquire. A five count administrative complaint filed July 23, 2012 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; s. 466.028(1)(x), F.S. of failure to meet minimum standards during a whitening procedure and failure to take adequate diagnostic comprehensive radiographs necessary to diagnose, treatment plan and/or perform the necessary treatments; s. (n) F.S., by failing to make available a copy of the patient's written dental records pursuant to one or more separate requests; s. (aa), F.S., by failing to comply with a final order by continuing to practice while suspended; s. (mm), F.S., by using a license to practice dentistry which had been suspended.

Probable Cause Recommendation for Penalty Revocation

A settlement agreement was presented to the Board with the following terms: reprimand, \$20,000 fine payable in \$5,000 increments, due within 90 days, 12 months, 18 months and 24 months of reinstatement and placement on probation; costs in the amount of \$7,833.44 within 12 months of reinstatement and placement on probation; dental license continues to be suspended until respondent satisfies continuing education conditions and the board enters an order lifting the suspension. Within 6 months, respondent shall successfully enroll in a two year comprehensive program and shall complete program to competency; in addition, if not already a part of the comprehensive program, complete a minimum of 3 hours of CE in Practice Management and a 3 hour Ethics course. Respondent will be placed on probation for a period of 3 years to include monitoring with review of billing and/or patient ledger records; patient reimbursement, laws and rules exam within 12 months.

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

Motion: by Dr. Thomas to reject the settlement agreement
Motion fails

Motion: by Dr. Thomas to amend the settlement agreement to require approval by the board chair prior to a decrease in the percentage of charts to be reviewed.
Second: by Dr. Winker
Vote: unanimous

Nicouly P. Jean-Philippe, D.D.S., Case No. 2010-01048, Settlement, PCP Thomas

Dr. Philippe was not present however he was represented by Brian Bursa, Esquire. An amended administrative complaint filed January 16, 2013 alleged violations of s. 466.028(1)(m), F.S., of failure to keep written dental records and medical history records

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justifying the course of treatment and s. 466.028(1)(x), F.S. of failure to meet minimum standards by failing to diagnose retained root tips following an extraction.

Probable Cause Recommendation for Penalty

Reprimand, appearance before board, \$10,000 fine, costs, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, minimum of level one in exodontia, minimum of level one in record keeping and minimum of level one in diagnoses and treatment planning, college level ethics course, 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, \$7,500 fine and costs of \$2,250.14 payable within 12 months of entry of final order, completion of remedial education at or through an accredited college of dentistry within 12 months: Level I in Exodontia, Level I in Diagnosis and Treatment, Level I in Records, refund to patient within 6 months of filing of final order, laws and rules exam within 12 months.

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

Motion: by Dr. Gesek to accept the settlement agreement
Second: by Dr. Winker
Vote: unanimous

Anthony Tyrone Graham, D.D.S., Case No. 2012-06855, Waiver/Default

Dr. Graham was present and was represented by Edwin Bayo, Esq. An administrative complaint filed on February 18, 2013 alleged a violation of s. 466.028(1)(aa), F.S. by violating a lawful order of the Board.

Probable Cause Recommendation for Penalty

\$5,000 fine, cost, suspension until compliant with previous final order

A Motion for Determination of Waiver and for Final Order by Hearing Not involving Disputed Issues of Material Facts was presented to the Board.

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

Motion: by Dr. Gesek to find that respondent was properly served
Second: by Dr. Thomas
Vote: unanimous

Motion: by Dr. Thomas to find that respondent failed to respond to the administrative complaint and therefore has waived his right to a formal hearing and to dispute the facts
Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Thomas to grant an 18 month extension for payment in Case No. 2010-15639; license will be suspended if payment is not completed within this time frame.
Second: by Dr. Stevens
Vote: unanimous

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Motion: by Dr. Winker to dismiss the current case
Second: by Dr. Thomas
Vote: unanimous

Richard I. Lipman, D.D.S., Case No. 2012-17556, Waiver/Default

Dr. Lipman was present and was represented by Richard Linig, Esq. An administrative complaint filed on February 18, 2013 alleged a violation of s. 466.028(1)(aa) by violating a lawful order of the Board.

Probable Cause Recommendation for Penalty
Suspension until compliant with prior final order

A Motion for Determination of Waiver and for Final Order by Hearing Not involving Disputed Issues of Material Facts was presented to the Board.

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

Motion: by Dr. Thomas to find that respondent was properly served
Second: by Dr. Kochenour
Vote: unanimous

Motion: by Dr. Winker to grant a continuance of this case as counsel had just been retained to represent Dr. Lipman
Second: by Dr. Stevens
Vote: unanimous

Gisleda Annette Ramos, D.D.S., Case No. 2010-16077, Waiver/Default, PCP Thomas

This case was continued to next meeting.

Margaret Elizabeth O'Keefe, D.D.S., Case No. 2012-02425, Waiver/Default

Dr. O'Keefe was not present and was not represented by counsel. An administrative complaint filed February 18, 2013 alleged a violation of s. 466.028(1)(mm) by violating a lawful order of the Board by failing to submit in Case 2010-11979, evidence that she completed the deficient continuing education hours.

Probable Cause Recommendation for Penalty
reprimand, appearance before board, \$5,000 fine, cost, suspension until compliant with C.E. and appearance before the board.

A Motion for Determination of Waiver and for Final Order by Hearing Not involving Disputed Issues of Material Facts was presented to the Board.

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

Motion: by Dr. Thomas to find that respondent was properly served
Second: by Dr. Kochenour
Vote: unanimous

Motion: by Dr. Gesek to find that respondent failed to respond and therefore has waived right to a hearing

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Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Winker that findings of fact support the violation of the Practice Act as charged in the administrative complaint
Second: by Dr. Kochenour
Vote: unanimous

Motion: by Dr. Thomas to find the respondent in violation of Florida Statutes as charged in the administrative complaint
Second: by Ms. Cabanzon
Vote: unanimous

Motion: by Dr. Kochenour that the board accept into evidence the investigative file for purposes of determining penalty and the opportunity to make a penalty recommendation
Second: by Dr. Thomas
Vote: unanimous

Motion: by Dr. Thomas to impose discipline of \$1500 fine, compliance with previous final order and suspension until completion of continuing education and respondent must appear before reinstatement
Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Winker to assess costs in the amount of \$136.68.
Second: by Dr. Stevens
Vote: motion passes with 3 members opposed

Thomas P. Floyd, D.M.D., Case No. 2012-03003, Voluntary Relinquishment Dr. Winker asked to be recused.

Dr. Floyd was not present and was not represented by counsel. An amended four count administrative complaint filed January 22, 2013 alleged violation of s. 466.028((1)(t), F.S., by yelling at patient, stuffing a bib in patient's mouth, pulling patient's head back by the hair and ignoring cries of pain; and three counts of violation of s. 466.028(1)(x), F.S., by failing to administer additional local anesthetic or stopping the procedure in response to patient's cries that she was in pain; by yelling at patient, stuffing a bib in patient's mouth, pulling patient's head back by the hair and ignoring cries of pain; and by failing to meet minimum prevailing standards of performance and diagnosis in treating patient's teeth #5 and #1.

Probable Cause Recommendation for Penalty
Revocation

A Motion for Board's Final Order by Voluntary Relinquishment was presented to the Board.

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

Motion: by Dr. Thomas to accept the voluntary relinquishment
Second: by Dr. Gesek
Vote: unanimous

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Thomas P. Floyd, D.M.D., Case No. 2012-04834, Voluntary Relinquishment

Dr. Floyd was not present, and was not represented by counsel. An amended thirteen count administrative complaint filed January 22, 2013 alleged violation of s. 466.028(1)(x), (n),(l),(t),(m),(bb),(mm),(z),(u), F.S. of failure to meet minimum standards, performing treatment on wrong patient, performing medically unnecessary procedures, failure to obtain parental consent, unsanitary conditions, failure to follow proper sterilization and disinfection procedures.

Recommendation for Penalty
Revocation

A Motion for Board's Final Order by Voluntary Relinquishment was presented to the Board.

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

Motion: by Dr. Thomas to accept the voluntary relinquishment
Second: by Dr. Gesek
Vote: unanimous

Christopher L. Petterson, D.D.S., Case Nos. 2013-00283 & 2013-00300, Voluntary Relinquishment, PCP Waived

Dr. Petterson was not present and was not represented by counsel. The investigative report alleged a violation of s. 456.072(1)(c)(k)(x)(dd), s. 456.074(1)(a) and s. 466.028(1)(c)(i)(mm), F.S. by being convicted of a crime related to the practice; failure to perform statutory/legal obligation of reporting conviction within 30 days; violation of a statute or rule; conviction as defined in s. 456.0635, F.S. controlled substances and trafficking in oxycodone, filing prescriptions using patient names and filing for own personal use.

Probable Cause was waived.

A Motion for Board's Final Order by Voluntary Relinquishment was presented to the Board.

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

Motion: by Dr. Gesek to accept the voluntary relinquishment
Second: by Dr. Thomas
Vote: unanimous

Steven John Courten, D.D.S., Case No. 2009-08825 Recommended Order, PCP Gesek, Thomas

This matter was reviewed by the Board at the May 17, 2013 meeting. 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.

Dr. Courten was not present and was not represented. 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,

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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. Comments not filed timely and did not note with particularity, where in the record they could be found. These were reviewed by the Board:

Following discussion, the following action was taken by the board.

Motion: by Dr. Perdomo
Second: by Dr. Kochenour
Vote:

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

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

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

Petitioner filed a motion that fine was too low a penalty for three violations and recommends a fine in the mid-range of the guidelines. A mid-range fine for the violations in the recommended order would total \$11,750.00. Following discussion, the following action was taken by the Board:

Motion: by Dr. Winker to reject the penalty recommendation of the administrative law judge
Second: by Dr. Kochenour
Vote: unanimous

Following discussion:

Motion: by Dr. Winker to vacate previous motion
Second: by Dr. Kochenour
Vote: unanimous

Board counsel advised Board to take discipline items individually if they wanted to make changes in what was recommended by the administrative law judge (ALJ).

Motion: by Dr Winker to accept ALJ's letter of concern
Second: by Dr. Perdomo
Vote: unanimous

Motion: by Dr. Perdomo to impose a recordkeeping course
Second: by Dr. Stevens
Vote: unanimous

Motion: by Dr. Stevens to amend the previous motion to impose a recordkeeping course to clarify Level II – 4 hours recordkeeping course taken at an accredited dental school

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Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Winker to impose a Level 1 (3 to 6 hours) endodontics course to competency at accredited dental school
Second: by Dr. Stevens
Vote: unanimous

Motion: by Dr. Winker to impose a 3 hour college level ethics course at a college or university
Second: by Dr. Stevens
Vote: unanimous

Motion: by Dr. Winker to reject the ALJ's \$ 2500 fine
Second: by Dr. Stevens
Vote: unanimous

Motion: by Dr. Winker to impose a \$10,000 fine
Second: by Dr. Kochenour
Vote: unanimous

Aggravating factors - due to violation of failing to use a rubber dam during the root canal Procedure and respondent was deficient in several areas
Respondent filed motion to object to costs incurred in investigation and prosecution.

Motion: by Dr. Perdomo to reject respondent's motion objecting to costs
Second: by Dr. Kochenour
Vote: unanimous

A Motion to Assess Costs for the trial and expenses of \$16,229.73 was presented to the Board.

PETITIONS [August 23, 2013]

A. Samantha Ledford, R.D.H.

Petition for Variance or Waiver to Rule 64B5-2.0135(3)(d), FAC

Ms. Ledford completed the ADEX dental hygiene examination May, 2011 and is requesting a variance or waiver to board rule 64B5-2.0135(3)(d), FAC, which requires applicants to pass the written examination within 18 months of successfully completing the clinical examination. Ms. Ledford is licensed in the state of Michigan and has recently relocated to Florida.

Motion: by Dr. Thomas to approve the petition
Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Thomas to allow 12 months to take the laws and rules exam
Second: by Dr. Winker
Vote: unanimous

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Aliesha Baker, R.D.H.

Petition for Variance or Waiver to Rule 64B5-2.0135(3)(d), FAC

Ms. Baker completed the ADEX dental hygiene examination in April 2011 and is requesting a variance or waiver to board rule 64B5-2.0135(3)(d), FAC, which requires applicants to pass the written examination with 18 months of successfully completing the clinical examination. Ms. Baker is licensed in the state of Michigan.

Motion: by Dr. Stevens to approve the petition and allow 12 months to take laws and rules
Second: by Dr. Thomas
Vote: unanimous

Sudeep Rao, D.M.D.

Petition for Variance or Waiver to Rule 64B5-7.0035(5), FAC

Dr. Rao is requesting a waiver to this rule as he serves as the only full time dentist at the Indian River County Health Department. At his last attempt at exam, Hurricane Sandy caused power outage.

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

Motion: by Dr. Thomas to vacate order
Second: by Ms. Cabanzon
Vote: unanimous

Motion: by Dr. Thomas to grant petition and allow until December 31, 2014 on his temporary certificate or until he is enrolled in AEGD residency program
Second: by Ms. Sissine
Vote: unanimous

APPLICATION REVIEW AND APPEARANCES [August 23, 2013]

David E. Bogan, D.M.D., Applicant for Dental Licensure

Dr. Bogan was present and was not represented by counsel. He is appearing due to an affirmative response on the applicant history section of the application.

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

Motion: by Dr. Winker to deny the application for licensure
Second: by Dr. Thomas
Vote: unanimous

Tracy Eskew, Applicant for Dental Hygiene Licensure, Certifications

Ms. Eskew was present and was not represented by counsel. She is appearing due to an affirmative response on the applicant history section of the application.

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

Motion: by Dr. Thomas to approve the application for dental hygiene licensure
Second: by Dr. Perdomo
Vote: unanimous

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Hina Bhinder, D.M.D., Review of Documentation to Demonstrate Full-Time Practice Requirement

Dr. Bhinder was present and was not represented by counsel. She is appearing for review of documentation to demonstrate the full-time practice requirement.

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

Motion: by Dr. Thomas to accept the administrative voluntary relinquishment
Second: by Dr. Gesek
Vote: unanimous

Michael Sampson, D.M.D., Request to Appear Before Board

Dr. Sampson was present and was represented by Randy Shochet, Esq. He is requesting that the Board reinstate his license and grant an extension to pay costs. On July 13, 2010, the Board issued a final order suspending his license until PRN evaluation and compliance, and submit costs of \$12,581.88 by July 13, 2013. Dr. Gesek approved a one year extension to pay the costs.

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

Motion: by Dr. Thomas to approve the return to practice once recommended courses are completed and he is evaluated and determined to be competent to practice dentistry by an accredited dental college.
Second: by Dr. Perdomo
Vote: unanimous

Dr. Gesek approved a one year extension to pay costs.

Jan Kaplan, D.D.S., Request to Appear Before Board

Dr. Kaplan was present and was not represented by counsel. Dr. Kaplan is requesting a second extension to pay fines and costs due by March 14, 2013. To date he has paid nothing – original date due was March 24, 2011. Extension was granted to March, 2013. Courses were originally due March 24, 2011 – 7 hours in Diagnosis and Treatment planning; 3 hours in Ethics, 4 hours record keeping, 3 hours in endodontics.

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

Motion: by Dr. Thomas to give 18 month extension to pay fines and 9 months to complete the continuing education and if this is not accomplished in these time periods, license will be suspended.
Second: by Dr. Kochenour
Vote: unanimous

Keith Kanter, D.D.S., Application for Conscious Sedation Permit

Dr. Kanter was present and was not represented by counsel. He is requesting approval for the permit. Following discussion, the following action was taken by the Board:

Motion: by Dr. Perdomo to approve the application
Second: by Dr. Stevens
Vote: motion passes with Dr. Thomas and Dr. Gesek opposed

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Tania Santos, D.D.S., Applicant for Dental Licensure

Dr. Santos was present and was represented by George Indest. She completed supplemental education at Community Smiles. An October, 2004 Administrative Complaint was reviewed by the Board regarding unlicensed activity. Dr. Santos previously held a dental hygiene license which she has retired. She has complied with requirements of her final order with the exception of the 2 years of probation. She retired her license and was placed in an internal closure status. Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to approve the dental license application

Second: by Dr. Perdomo

Vote: motion passed with Dr. Gesek and Mr. Martini opposed.

Yosvany J. Vento, D.D.S., Application for Credentials Review for Dental Licensure

Dr. Vento was present and was not represented by counsel. Staff is requesting review of his 3 year prosthodontics education at Louisiana State University. This issue is that this was completed in 2009 and the board has approved similar applications last summer.

Motion: by Dr. Gesek to approve the application for credentials review

Second: by Dr. Kochenour

Vote: unanimous

Mirilis Rodriguez, D.D.S.,

Dr. Rodriguez was present and was represented by Frank DeLuca. Dr. Rodriguez was convicted, the conviction was expunged/vacated and was not related to the practice of dentistry.

Following discussion, the board took the following action:

Motion: by Dr. Thomas to vacate the notice of intent to deny licensure certification and approve Dr. Rodriguez for licensure

Second: by Dr. Winker

Vote: unanimous

Motion: by Dr. Thomas to approve Dr. Rodriguez for licensure

Second: by Dr. Perdomo

Vote: unanimous

OLD BUSINESS

None

NEW BUSINESS

Board meeting dates for 2014

February 21, 2014

May 16, 2014

August 22, 2014

November 21, 2014

ADJOURNMENT

The meeting was adjourned at 12:55 p.m.