

DRAFT

**BOARD OF DENTISTRY
GENERAL BUSINESS MEETING
Residence Inn Downtown
600 West Gaines Street
Tallahassee, FL 32304
800-627-7468
February 21, 2014
7:30 A.M.**

CALL TO ORDER/ROLL CALL

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

Members present:

Joe Thomas, D.D.S., Chair
Wade Winker, D.D.S.,
William Kochenour, D.D.S.
Dan Gesek, D.M.D.
Carol Stevens, D.D.S.
Catherine Cabanzon, R.D.H., B.A.S.D.H.
Leonard Britten, D.D.S.
Tim Pyle
Anthony Martini
Angela Sissine, R.D.H.

Members absent:

Robert Perdomo, D.M.D., Vice-Chair

Staff present:

David Flynn, Board Counsel
Sue Foster, Executive Director
Adrienne Rodgers, Esq., Asst. General
Counsel, PSU
Cindy Ritter, Program Administrator
Bridget McDonnell, Asst. General Counsel,
PSU
Jack Wise, Asst. General Counsel, PSU
Monique Bryan, Asst. General Counsel, PSU
Accurate Court Reporters

REVIEW OF MINUTES

November 15, 2013 General Business Meeting

The minutes of the November 15, 2013 meeting were reviewed. Following discussion, the following action was taken by the Board:

Motion: by Dr. Kochenour to approve
Second: by Dr. Gesek
Vote: unanimous

January 8, 2014 General Business Meeting

The minutes of the January 8, 2014 meeting were reviewed. Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek
Second: by Dr. Kochenour
Vote: unanimous

REPORTS

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Board Counsel Rules Report

Executive Director

Ms. Foster reminded everyone that there is one week left of the renewal cycle. There was discussion regarding the manner in which licensees are now required to enter their CE credits prior to renewing the license. Board members stated that it was a difficult, time consuming process, difficult to find the basic free option, 90 day trial with a credit card, etc. Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek that the executive director send a letter to the Governor requesting that licensees not be required to pay a \$29.99/year subscription to renew their license

Second: by Dr. Thomas

Vote: unanimous

Budget Reports – Renewal 2-28-14

Reports provided for the Board's information.

Ratification of Lists

The list will be provided in the next agenda.

Chair

None

Vice-Chair

None

Board Members

Dental Records Task Force (Dr. Winker)

It was reported that this is a work in progress and that a report at this time would be premature.

TOPIC DISCUSSION

Request from Dr. David DePorter, Florida Institute for Advanced Dental Education

Dr. David DePorter and Mr. Edwin Moure, President and CEO of Community Smiles were present to discuss information regarding Community Smiles, a non-profit community clinic serving the uninsured and underserved in Miami. He included an email dated February 3, 2014 regarding the new organization name and program.

His question regarding their current continuing education course in Occlusion Mastership. Can an out of state licensed dentist participate in this program with patients?

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

Motion: by Dr. Thomas to allow this practice

Second: by Dr. Gesek

Vote: unanimous

FOR YOUR INFORMATION

Letter to the Board re Perio Portion of ADEX for FL licensure

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2014 Legislation

1. **HB 457, An act relating to public records**
2. **SB 664, An act relating to health access dental licenses**
3. **SB 86, An act relating to dentists**
4. **SB 340, An act relating to prepaid dental plans**
5. **SB 344, An act relating to dentists-dental student loan repayment program**
6. **Proposed Committee Bill SPB 7028, An Act Relating to Telemedicine**

ADEX 10th Annual Meeting, November 7-9, 2014

Mr. Ron Watson, lobbyist, Florida Dental Association spoke to the board regarding SPB 7028 telemedicine bill which basically now has two issues - how do you get paid equality – office vs. telemedicine visit, out of state visits. This bill has been tabled.

Motion: by Dr. Gesek to not support SPB 7028
Second: by Mr. Martini
Vote: unanimous

Mr. Watson also advised the Board of a military bill that had surfaced yesterday that seems to be moving quickly that appears to provide reciprocity to dentists. The bill language would be added to Chapter 456, F.S.

Motion: by Dr. Gesek asked that the board send a letter to the sponsors of the bill addressing the Board's concerns of granting a license to members of the military who have not received the dentistry requirements that are currently mandated for all licensed dentists in Florida. The board members do not feel that this would adequately protect the public.
Second: by Mr. Martini
Vote: unanimous

DISCIPLINARY PROCEEDINGS

Kevin Garrett Brooks, DMD; Case No 2012-15248, Settlement

Dr. Thomas is recused due to his participation on the probable cause panel.

Dr. Brooks was present and was represented by Scott G. Reichert, Esq. An administrative complaint filed April 25, 2013 alleged a violation of s. 466.028(1)(x) of failure to meet minimum standards of diagnosis and treatment involving crown restorations.

Probable Cause Recommendation for Penalty

Reprimand, \$10,000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, Level I in Crown and Bridge, Level I in Diagnosis and Treatment Planning, 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: appearance before the board, reprimand, fine of \$3500, payable within 12 months, costs of \$966.08 payable within 12 months, completion of minimum of Level I course in Diagnosis and Treatment Planning, minimum of Level II course in Crown and Bridge, Ethics course, successful completion of laws and rules exam within one year.

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

Motion: by Dr. Gesek to reject the settlement agreement

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Second by Dr. Winker
Vote: unanimous

Motion: by Dr. Gesek to offer a counter settlement agreement including the terms in the previous settlement, change reprimand to a letter to concern, Level I in Crown and bridge
Second: by Dr. Kochenour
Vote: unanimous

Dr. Brooks accepted the counter settlement agreement.

Shahrzad Haghayegh, DMD; Case No 2013-09332, Settlement

Dr. Thomas is recused due to his participation on the probable cause panel.

Dr. Haghayegh was present and was represented by Stuart Cohen, Esq. An administrative complaint filed November 20, 2013 alleged a violation of s. 466.028(1)(b), F.S. of having a license to practice dentistry acted against by the licensing authority of another state. Respondent's Massachusetts license to practice dentistry was suspended for one year stayed to May 31, 2012 to be followed by probation. Respondent self-reported this action.

Probable Cause Recommendation for Penalty – appearance, suspension to run concurrently with suspension imposed by Massachusetts Board, compliance with all terms of Massachusetts agreement, petition to Florida Board to lift suspension.

A settlement agreement was presented to the Board with the following terms: appearance before the board, suspension for term to run concurrently with the suspension imposed by the Massachusetts Board; compliance with all terms of Massachusetts agreement; petition to Florida board to lift suspension.

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

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

Alan F. Davis, DDS; Case No 2011-14271, Settlement,

Dr. Stevens is recused due to his participation on the probable cause panel.

Dr. Davis was present and was represented by David Preston, Esq. A two count administrative complaint filed May 8, 2012 was changed to one count of alleged violation of s.466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment regarding endodontic treatment with continued periapical involvement without referral to an endodontist.

Probable Cause Panel recommendation:

Original panel recommended \$10,000 fine and CE in Diagnosis and Treatment Planning, Crown and Bridge, Endodontics and Ethics. The standard of care count was dropped during reconsideration by the Panel.

A settlement agreement was presented to the Board with the following terms: appearance, letter of concern, fine of \$5000 payable within 6 months, costs not to exceed \$2600 payable within 6 months; diagnosis and treatment planning (3-6 hours); record keeping (3 – 6) hours at or through an accredited college of dentistry; laws and rules exam within 12 months.

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

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

Richard I. Lipman, DDS; Case No 2012-17556, Waiver

No board members are recused due to participation on the probable cause panel.

Dr. Lipman was not 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) by violating a lawful order of the Board.

Mr. Bayo advised he was recently retained to represent Dr. Lipman, therefore, he requested that a continuance be granted. The board discussed that there had been two prior continuances.

Motion: by Dr. Thomas to grant the continuance
Second: by Dr. Gesek
Vote: unanimous

Gisleda Annette Ramos, DDS; Case No 2010-16077, Waiver

Dr. Thomas is recused due to his participation on the probable cause panel.

Dr. Ramos was present and was represented by Jeanette Andrews, Esq. An amended administrative complaint filed May 7, 2013 alleged a violation of s. 466.028(1)(x) of failure to meet minimum standards of orthodontic diagnosis and treatment.

Probable Cause Recommendation for Penalty

reprimand, appearance before board, \$5000 fine, cost, reimbursement for the patient of fees paid to the respondent for procedures involved in complaint, minimum of level two in record keeping, successfully complete laws and rules examination within one year and one biennium C.E. audit.

A Motion for Finding of Waiver and Final Order was presented to the Board.

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

Motion: by Dr. Gesek to table the case to allow discussion between Ms. Rodgers and respondent's counsel
Second: by Dr. Kochenour
Vote: unanimous

Motion: by Dr. Stevens to allow a continuance
Second: by Ms. Cabanzon
Vote:

After discussion, a settlement was presented to the board with the following terms:

Letter of concern, fine of \$2500 within 6 months, Level 1 in recordkeeping to competency within 12 months of entry of final order, patient reimbursement within 6 months of entry of final order, pass laws and rules exam within 12 months.

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Motion: by Dr. Stevens to reject the settlement
Second: by Dr. Kochenour
Vote: unanimous

Motion: by Dr. Kochenour to dismiss the case
Second: by Dr. Stevens
Vote: unanimous

Miranda Whyllly Smith, DDS; Case No 2011-15948, Informal Hearing (PCP Stevens)

This case was continued by CSU.

Julie Ann Yap, RDH; Case No 2012-16485, Informal Hearing No board members are recused due to participation on the probable cause panel.

Ms. Yap was not present and was not represented by counsel. A two count administrative complaint filed on February 13, 2013 alleged violations of s. 456.072(1)(c), F.S. and s. 456.072(1)(x) by failing to report her convictions involving plea of nolo contendere to delivery of oxycodone and possession of cocaine and drug paraphernalia to the Board.

Probable Cause Recommendation for Penalty
Reprimand, appearance before board, revocation of license and recommendation for an emergency suspension order.

A Motion for Final Order 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. Winker
Vote: unanimous

Motion: by Dr. Gesek to adopt findings of fact as alleged in the administrative complaint as the Board's findings
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. Britten to find the respondent in violation of Florida Statutes as charged in the administrative complaint
Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Gesek 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. Winker

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Vote: unanimous

Motion: by Dr. Thomas to impose discipline of revocation
Second: by Dr. Gesek
Vote: unanimous

**Michael G. Hammonds, DDS; Case No 2012-14636, Informal Hearing
(PCP Stevens)
(Case Continued per Prosecution Services Unit)**

William T. Woodward, DDS; Case No 2013-10111, Voluntary Relinquishment (PCP Waived)

Dr. Woodward was not present and was not represented by counsel. Alleged violations include s.466.028(1)(p),(s),(mm), of failure to perform statutory obligations, inability to practice with skill and safety due to alcohol, drugs or mental or physical impairment; being terminated from the PRN due to non-compliance.

A Voluntary Relinquishment of license 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. Kochenour
Vote: unanimous

**Lerida Martinez Mulkay, DMD; Case No. 2013-08683, Voluntary Relinquishment (PCP Waived)
Lerida Martinez Mulkay, DMD; Case No. 2013-08686, Voluntary Relinquishment (PCP Waived)
Lerida Martinez Mulkay, DMD; Case No. 2013-09151, Voluntary Relinquishment (PCP Waived)
Lerida Martinez Mulkay, DMD; Case No. 2013-09300, Voluntary Relinquishment (PCP Waived)
Lerida Martinez Mulkay, DMD; Case No. 2013-07109, Voluntary Relinquishment (PCP Waived)**

Dr. Mulkay was not present and was represented by Daniel Shapiro, Esq.. Alleged violations include s.466.028(1)(p),(s),(mm), of failure to perform statutory obligations, inability to practice with skill and safety due to alcohol, drugs or mental or physical impairment; failure to meet minimum standards.

A Voluntary Relinquishment of license was presented to the Board in which respondent agreed to relinquish license on September 27, 2013.

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

Motion: by Dr. Kochenour to accept the voluntary relinquishment of license
Second: by Dr. Gesek
Vote: unanimous

Miranda Whyllly Smith, DDS; Case No. 2011-15616, Recommended Order (PCP Gesek)

Dr. Smith was present and was represented by Christopher Torres, Esq. On April 8, 2013, the Department issued an amended Administrative Complaint against Dr. Smith and referred the matter to Division of Administrative Hearings. The administrative law judge recommended that the Board of Dentistry enter a final order dismissing the amended administrative complaint.

The Department filed exceptions to the Recommended order:

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Mr. Torres stated that petitioner's exceptions were filed late and therefore should be rejected by the Board.

Motion: by Dr. Thomas to reject petitioner's exceptions
Second: by Dr. Winker
Vote: unanimous

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

Motion: by Dr. Thomas to accept the Administrative Law Judges findings of fact and conclusions of law and dismiss the case
Second: by Dr. Winker
Vote: unanimous

Miranda Whyllly Smith, DDS; Case No. 2010-16200, Recommended Order (PCP Gesek)

Dr. Smith was present and was represented by Christopher Torres, Esq. An administrative complaint, filed July 23, 2013, F.S., alleged violations of s. 466.028(1)(x), F.S. by diagnosing caries and recommending fillings for one or more of pediatric patient's teeth when no treatment was indicated.

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

Motion: by Dr. Kochenour to accept the findings of fact and conclusions of law and to adopt the recommended order
Second: by Ms. Cabanzon
Vote: unanimous

Prosecution Report

Ms. Rodgers reported that there are currently 367 cases in legal with 165 cases older than one year. Her report included a breakdown of numbers of cases in each year and stage of prosecution. Dr. Thomas recognized Mr. Wayne Mitchell in the audience who had previously been the Board's prosecutor for 10 years and had done an excellent job. Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to follow all leads to hire Mr. Mitchell
Second: by Dr. Gesek
Vote: unanimous

Motion: by Dr. Thomas to allow the Department to continue to process the year old cases
Second: by Dr. Winker
Vote: unanimous

PETITIONS

Petition for Variance or Waiver

Surendra B. Pattathan, BDS, Applicant for Dental Limited License

Dr. Pattathan was present and was not represented by counsel. He is an applicant for a limited license and plans to practice in correctional centers. He holds a license in New York and was licensed in 1982. This application is before the board due to prior disciplinary action in New York. Dr. Pattathan has not practiced dentistry since 2005.

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

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Motion: by Dr. Thomas to approve the application and the petition
Second: by Dr. Winker
Vote: motion fails

Sarah Pasko, RDH

Ms. Pasko was not present nor represented by counsel. She is seeking a variance to rule 64B5-2.0135(3)(d), F.A.C. In order to be eligible for licensure, the written exam must be completed within 18 months of successful completing the practical or clinical examination. It has been 3 years since she has taken and passed the exam.

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

Motion: by Dr. Thomas to grant the variance
Second: by Mr. Martini
Vote: unanimous

Motion: by Dr. Kochenour to grant Ms. Pasko 6 months to take and pass the laws and rules
Second: by Mr. Martini
Vote: unanimous

APPLICATION REVIEW & APPEARANCES

Tim Riesz, DMD, Applicant for Conscious Sedation Permit

Dr. Riesz was present and was represented by George Indest, III, Esq. Dr. Riesz's application was referred for board review by Dr. Gesek due to concern over possible overlap in some of the cases. Dr. Riesz completed a conscious sedation course at Georgia Regents University.

Following discussion, Dr. Riesz indicated he would be willing to complete additional cases toward the approval of the permit. Dr. Gesek will review the additional cases and appearance will not be required.

Luis Alicea, DMD, Applicant for Conscious Sedation Permit

Dr. Alicea was present and was not represented by counsel. Dr. Alicea's application was referred for board review by Dr. Gesek due to concern over possible overlap in some of the cases. Dr. Alicea completed a conscious sedation course at University of Alabama at Birmingham.

Following discussion, Dr. Alicea withdrew his application.

Godfrey Onugha, DMD, Motion for Extension of Time

Dr. Thomas had approved a 24 month extension prior to the Board meeting.

David Hazan, DMD, Stipulation and Withdrawal of Application

Dr. Hazan was not present nor represented by counsel. Dr. Hazan is withdrawing his application for a conscious sedation permit and will not reapply until he retakes the sedation training course and meets requirements.

Motion: by Dr. Kochenour to approve the stipulation and allow him to withdraw his application
Second: by Dr. Winker
Vote: unanimous

Michael Addair Tarver, DMD, Motion for Reconsideration of Final Order

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Dr. Tarver was present and was represented by Edwin Bayo, Esq. Respondent is requesting a reconsideration of Cases 2013-12498 and 2013-09493. Dr. Winker was recused from this case.

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

Motion: by Dr. Thomas to reconsider
Second: by Dr. Britten
Vote: motion fails

Dan K. Bolds, DDS, Request for Reinstatement

Dr. Bolds was present and was not represented by counsel. Dr. Penny Ziegler and Dr. Jerome Gropper, PRN appeared with Dr. Bolds stating that he is in compliance. On September 23, 2005, petitioner was suspended until PRN recommendation of practice with reasonable skill and safety.

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

Motion: by Dr. Thomas to allow Dr. Bolds to return to practice
Second: by Dr. Winker
Vote: unanimous

Bryan Gerstenberg, DDS, Appearance with Monitor

Dr. Gerstenberg was present and has obtained an approved monitor, Dr. Roberto Maal, DDS. His final order requires an appearance with the monitor before the Board at the commencement of his probation.

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

Motion: by Dr. Thomas that the appearance requirement has been met
Second: by Dr. Gesek
Vote: unanimous

Ruben Alcazar, Applicant for Credentials Review..(Second Addendum pg. 6)

Dr. Alcazar was not present but was represented by Edwin Bayo, Esq. Staff is requesting a review of the supplemental education in advanced graduate studies in Orthodontics. Following discussion, the following action was taken by the Board:

Motion: by Dr. Thomas to approve the application
Second: by Ms. Cabanzon
Vote: unanimous

PRESENTATION – DISCIPLINARY PROCESS

Susan Love, Bureau Chief, MQA Bureau of Enforcement

The disciplinary process training has been continued to a future meeting.

OLD BUSINESS

None

NEW BUSINESS

Request for Rule update, 64B5-25.003 Required Sterilization and Disinfection Procedures

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Ms. Benedict requests that the Board review the Guidelines for Infection Control in Dental Health Care Settings for possible updates to rules.

Mr. Flynn asked the board to consider addressing rule 64B5-2.0146 due to the statute change in 2012. After discussion, the board took the following action:

Motion: by Dr. Thomas to refer the rule to the rules committee

Second: by Ms. Cabanzon

Vote: unanimous

ADJOURNMENT

The meeting was adjourned at 10:50 a.m.