

**BOARD OF DENTISTRY
GENERAL BUSINESS MEETING MINUTES
DRAFT MINUTES
November 19, 2021
Rosen Plaza Hotel
9700 International Drive
Orlando, FL 32819
(407) 996-9700
7:30 A.M. ET**

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the board's website.

I. CALL TO ORDER/ROLL CALL

MEMBERS PRESENT

Nick White, DMD, Chair
Fabio Andrade, Consumer Member, Vice Chair
T.J. Tejera, DMD, MD
Claudio Miro, DDS
Karyn Hill, CRDH, BS
Bradley Cherry, DDS, MD
Christine Bojaxhi, DMD
Thomas McCawley, DDS
Jose Mellado, DMD
Angela Johnson, RDH

STAFF PRESENT

Jessica Sapp, Executive Director
Paulette Schofill, Program Administrator

BOARD COUNSEL

Lawrence Harris
Senior Assistant Attorney General

PROSECUTION SERVICES UNIT

Andrew Pietrylo, Chief Legal Counsel
Major Thompson, Assistant General Counsel

COURT REPORTER

American Court Reporting
Cindy Green
407-896-1813

Ms. Johnson read the Department of Health's mission: To protect, promote & improve the health of all people in Florida through integrated state, county, & community efforts.

II. DISCIPLINARY PROCEEDINGS

A. Informal Hearings

- i. Jerome J. Petrisko, Case No. 2018-27637
(PCP – Fatmi, Thomas, White)

Dr. White and Dr. Miro were recused due to participation on the probable cause panel.

Dr. Petrisko was present and sworn in by the court reporter. He was not represented by counsel.

Mr. Thompson summarized the case for the Board. Respondent was charged with the following violation: **Count I:** Section 466.028(1)(aa), Florida Statutes, for violation of a lawful order of the Board previously entered in a disciplinary hearing by failing to pass the

Laws and Rules Examination within twelve (12) months of the Final Order being filed.

Motion by: Dr. Tejera to find that the Respondent was properly served and has requested an informal hearing and to adopt the findings of fact as set forth in the Administrative Complaint.

Second: Mr. Andrade

Vote: Unanimous

Motion: by Dr. Tejera to adopt the conclusions of law as set forth in the Administrative Complaint and find that this constitutes a violation of the practice act.

Second: Ms Hill

Vote: Unanimous

The Department recommends the following penalties:

- \$10,000 Fine within six (6) months
- Suspension until compliant with the Final Order
- Reinstatement subject to appearance before the Board

After discussion, the following action was taken:

Motion by: Dr. Tejera to accept the Settlement Agreement

Second: Mr. Hill

Vote: Unanimous

Motion: by Dr. Tejera to impose costs of \$589.19 to be paid within ninety (90) days.

Second: Ms. Hill

Vote: Unanimous

Motion: by Dr. Mellado to reconsider

Second: Dr. Cherry

Vote: 4/4 Motion failed. Dr. Tejera, Ms. Johnson, Dr. Bojaxhi, Mr. Andrade were opposed.

B. Settlement Agreements

- i. John Brown, DMD, Case No. 2019-41302
(PCP – Miro, Morgan, Cherry)

Dr. Miro and Dr. Cherry were recused due to participation on the probable cause panel.

Dr. Brown was present and was sworn in by the court reporter. He was represented by Dennis Vandenberg, Esq.

Mr. Thompson summarized the case for the Board. Respondent was charged with the following violations: **Count I:** Section 466.028 (1)(x), Florida Statutes for by failing to meet the minimum standards of performance in diagnosis and treatment by failing to seat the crown on Patient S.H.'s tooth 12 with acceptable fit and acceptable contours; by failing to seat the crown on Patient S.H.'s tooth 5 with acceptable fit and acceptable contours; by failing to seat the crown on Patient S.H.'s tooth 29 with acceptable fit and acceptable contours; by failing to seat the crown on Patient S.H.'s tooth 21 with acceptable fit and acceptable contours; by failing to diagnose one or more of the above deficiencies and/or; by paying or having paid on Respondent's behalf, an indemnity of \$30,000 to Patient S.H. as a result of Respondent's

negligent conduct in seating the crowns on Patient S.H.'s teeth, 5, 12, 21, and 29.

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

- Appearance
- Letter of Concern
- Fine of \$3,000 to be paid within sixty (60) days of the filing of the Final Order
- Costs in the amount of \$4,000 to be paid within sixty (60) days of the filing of the Final Order
- Continuing Education to be completed in person at or through a Florida accredited college of dentistry within 12 months: Level I (3-6 hour) course in Crown and Bridge. Respondent shall be restricted from performing those dental procedures until remediation is complete.
- Successful completion of the Laws and Rules exam within twelve (12) months of the filing of the Final Order

After discussion, the following action was taken:

Motion by: Dr. Tejera to accept the Settlement Agreement

Second: Mr. Andrade

Vote: Unanimous

- ii. John Dozier, DMD, Case No. 2020-09755
(PCP – Morgan, Miro, and Perdomo)

Dr. Miro was recused due to participation on the probable cause panel.

Dr. Dozier was present and was sworn in by the court reporter. He was represented by Cleveland Acree, Esq.

Mr. Thompson summarized the case for the Board. Respondent was charged with the following violations: **Count I:** Section 466.028(1)(x), Florida Statutes by failing to meet the minimum standards of performance in diagnosis and treatment by failing by conducting a split thickness flap with sharp dissection on the floor of Patient A.G.W.'s mouth, despite the risk of injury to vital structures; by failing to diagnose and/or develop a treatment plan sufficient to address Patient A.G.W.'s salivary gland obstruction; and/or; by having an indemnity paid in the amount of \$100,000.00 to Patient A.G.W., as a result of negligent conduct on the part of Respondent.

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

- Appearance
- Fine of \$3,000 to be paid within ninety (90) days of the filing of the Final Order
- Costs in the amount of \$3,000.00 to be paid within ninety (90) days of the filing of the Final Order.
- Continuing Education to be completed in person at or through a Florida accredited college of dentistry within 12 months: Level I (3-6 hour) course in Diagnosis and Treatment Planning; Level I (3-6 hour) course in Oral Surgery. Respondent shall be restricted from performing those dental procedures until remediation is complete.
- Successful completion of the Laws and Rules exam within twelve (12) months of the filing of the Final Order

Dr. Tejera made an oral amendment to change the Level I course in Oral surgery to a Surgical Anatomy Course.

After discussion, the following action was taken:

Motion by: Dr. Tejera to accept the Settlement Agreement with the oral amendment
Second: Dr. Cherry
Vote: Unanimous

Dr. Dozier accepted on the record.

- iii. Frederick Joseph Eck, DDS, Case No. 2020-05247
(July 9, 2021/ PCP – Miro, Morgan, Perdomo)
(March 12, 2021/PCP – Miro, Morgan, Cherry)

Dr. Miro and Dr. Cherry were recused due to participation on the probable cause panel.

Dr. Eck was present and was sworn by the court reporter. He was represented by Michael Ragan, Esq.

Mr. Wilson summarized the case for the Board. Respondent was charged with the following violations: **Count I:** Section 466.028(1)(mm), Florida Statutes, by failing to maintain Patient D.M.'s records as the owner of a multi-dentist practice.

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

- Appearance
- Reprimand
- Fine of \$5,000 to be paid within ninety (90) days of the filing of the Final Order
- Costs in the amount of \$4,000.00 to be paid within ninety (90) days of the filing of the Final Order.
- Successful completion of a three-semester hour course in Ethics to be completed at or through (online) any accredited college or university within twelve (12) months of the filing of the Final Order (listed as at or through accredited college of dentistry in the SA)
- Successful completion of the Laws and Rules exam within twelve (12) months of the filing of the Final Order

After discussion, the following action was taken:

Motion by: Dr. Tejera to accept the Settlement Agreement
Second: Mr. Andrade
Vote: Unanimous

- iv. Filiberto Herdocia, DDS, Case No. 2016-25160
(PCP – Miro, Morgan, McCawley)

Dr. Miro and Dr. McCawley were recused due to participation on the probable cause panel.

Dr. Herdocia was present and sworn in by the court reporter. He was represented by Robert Cousins, Esq.

Mr. Thompson summarized the case for the Board. Respondent was charged with the following violations: **Count I:** Section 466.028(1)(h), Florida Statutes, by being employed by a corporation,

organization, group, or person other than a dentist or a professional corporation or limited liability company composed of dentists to practice dentistry at Art Dental Services and/or the Tooth Place.

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

- Appearance
- Reprimand
- Fine of \$6,000 to be paid within ninety (90) days of the filing of the Final Order
- Costs in the amount of \$7,000.00 to be paid within ninety (90) days of the filing of the Final Order.
- Respondent shall discontinue all ownership and employment by or with any corporation, organization, group, or person other than a dentist or professional corporation or limited liability company composed of dentists to practice dentistry within ninety (90) days of the Final Order.
- Successful completion of a three-semester hour course in Ethics to be completed at or through (online) any accredited college or university within twelve (12) months of the filing of the Final Order (listed as at or through accredited college of dentistry in the SA)
- Probation for a period of two (2) years effective on the date of the filing of the Final Order
- Successful completion of the Laws and Rules exam within twelve (12) months of the filing of the Final Order

After discussion, the following action was taken:

Motion by: Dr. Mellado to reject the Settlement Agreement and send back to prosecution for further investigation

Second: Dr. Cherry

Vote: 6/2 Motion fails. Dr. Tejera, Dr. White, Ms. Hill, Ms. Johnson, Dr. Bojaxhi, Mr. Andrade were opposed.

Motion by: Dr. White to reject the Settlement Agreement.

Second: Ms. Hill

Vote: Unanimous

Motion by: Dr. White to offer a counter Settlement Agreement increasing the amount of the fine to \$10,000. All other terms remain the same.

Second: Ms. Hill

Vote: Unanimous

Dr. Herdocia accepted the counter agreement on the record.

v. James Magee, III, DDS, Case No. 2017-00670
(PCP – Gesek, Melzer, Calderone)

Dr. Magee was present and was sworn in by the court reporter. He was represented by Lance Leider, Esq.

Mr. Thompson summarized the case for the Board. Respondent was charged with the following

violations: **Count I:** Section 466.028(1)(mm), Florida Statutes, by preparing tooth 18 for a crown instead of tooth 19. **Count II:** Section 466.028(1)(m), Florida Statutes, for failing to keep written dental records and medical history records justifying the course of treatment by failing to record any justification for preparing tooth 18 for a crown.

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

- Appearance
- Reprimand
- Fine of \$5,000 to be paid within twelve (12) months of the filing of the Final Order
- Costs in the amount of \$6,370.60. to be paid within ninety (90) days of the filing of the Final Order. (Costs capped at \$6,500.00)
- Continuing Education to be completed in person at or through a Florida accredited college of dentistry within 12 months: Level I (3-6 hour) course in Diagnosis and Treatment Planning; Level I (3-6 hour) course in Recordkeeping.
- Patient reimbursement in the amount of \$1,558.00. Proof of payment, accompanied by copies of the invoices, must be made to the Compliance Officer within six (6) months of the filing of the Final Order
- Successful completion of the Laws and Rules exam within twelve (12) months of the filing of the Final Order

After discussion, the following action was taken:

Motion by: Mr. Andrade to reject the Settlement Agreement

Second: Ms. Johnson

Vote: Unanimous

Motion by: Mr. Andrade to offer a counter Settlement Agreement increasing the amount of the fine to \$20,000. All other terms remain the same

Second: Ms. Johnson

Vote: Unanimous

Dr. Magee shall accept or reject the counter settlement agreement within ten (10) days of filing.

C. Determination of Waiver

- i. Tiffany Graves, DR, Case No. 2021-09206
(PCP – Miro, Hill, Perdomo)

Dr. Miro and Ms. Hill were recused due to participation on the probable cause panel.

Ms. Graves was not present. She was/was not represented by counsel.

Mr. Thompson summarized the case for the Board. Respondent is charged with the following violations: **Count I:** Section 466.028 (1) (mm), Florida Statutes, by violating section 456.072 (1)(x), Florida Statutes, by failing to report to the board in writing within thirty (30) days after Respondent entered a plea of nolo contendere on or about December 3, 2020.

Motion: by Dr. Tejera to find the Administrative Complaint was properly served on Respondent and that Respondent failed to timely respond to the Administrative Complaint and has waived

the right to request a hearing, to adopt the allegations of fact in the Administrative Complaint as the findings of fact of the Board, and to find the Respondent in violation of the Florida Statutes as charged in the Administrative Complaint.

Second: by Mr. Andrade

Vote: Unanimous

After discussion, the following action was taken:

Motion: by Dr. Tejera to revoke Respondent's license

Second: Mr. Andrade

Vote: Unanimous

D. Voluntary Relinquishment

- i. Scott Farber, DDS, Case No. 2018-07866
(PCP – Miro, Morgan, and Perdomo)

Dr. Miro was recused due to participation on the probable cause panel.

Dr. Farber was not present.

Motion: by Dr. Tejera to accept the Voluntary Relinquishment

Second: by Dr. Cherry

Vote: Unanimous

- ii. Jeffrey Martin, DMD, Case Nos. 2020-38357, 2021-13106, 2021-07846, 2021-09264, 2021-09524, 2021-10051, 2021-10236
(PCP – Waived)

Dr. Martin was not present.

Motion: by Dr. Tejera to accept the Voluntary Relinquishment

Second: by Dr. Cherry

Vote: Unanimous

III. PROSECUTION REPORT

A. John Wilson, Deputy General Counsel

Mr. Wilson presented the Board with the current status of Board cases.

RE: Current Open/Active Dentistry Cases Case Status	Report Date 5/21/2021	Report Date 8/13/2021	Report Date 11/19/2021
Total cases open/active in Prosecution Services:	192	208	251

Cases in Emergency Action Unit:	4	2	2
Cases under legal review:	105	131	137
Cases awaiting supplemental investigation/expert opinion:	11	2	24
Cases with PCP recommendation:	36	29	37
Cases where probable cause has been found:	33	24	6
Cases where DOAH has been requested:	18	22	22
Cases pending before DOAH:	1	1	3
Cases on Board meeting agendas:	15	13	15
Cases on appeal:	1	0	0
Cases older than one year: *	81	72	58

Motion: by Mr. Andrade to continue prosecuting year and older cases
Second: Dr. Tejera
Vote: Unanimous

IV. RESPONDENT’S MOTION FOR RECONSIDERATION AND REHEARING

A. Tatyana Stepanchuk, DMD

Case No. 2018-00406

Dr. Stepanchuk was not present. She was represented by Linda McCullough, Esq.

Respondent’s counsel filed a Motion for Reconsideration and Rehearing and Motion to Stay her costs and fees.

After discussion, the following action was taken:

Motion by: Dr. Tejera to deny Motion for Reconsideration and Rehearing but to allow modification of the Final Order to allow Respondent to pay full balance within 15 months. First payment is due within fifteen days of the filing of the order date.

Second: Mr. Andrade

Vote: Unanimous

Dr. Stepanchuk accepted though counsel on the record.

V. PETITION FOR MODIFICATION OF FINAL ORDER

- i. John Craig, DMD
Case Nos. 2006-07219, 2006-28111

On October 5, 2021, Mr. Craig filed a request to modify his Final Order on Case Nos. 2006-07219 and 2006-28111. On February 7, 2007 the Board accepted a Voluntary Relinquishment of Dr. Craig's dental license. The Voluntary Relinquishment stated that the Respondent agreed to never reapply for any license pertaining to dentistry in the State of Florida. He is requesting that the Board modify the Final Order to provide that the Respondent will not reapply for license until 15 years after the date of the Voluntary Relinquishment.

After discussion, the following action was taken:

Motion by: Mr. Andrade to deny
Second: Dr. Miro
Vote: 9/1 Motion carries. Dr. Cherry opposed.

- ii. Tatyana Stepanchuk, DMD
Case No. 2018-00406

On October 19, 2021, Dr. Stepanchuk filed a Request to Modify her Final Order on Case No. 2018-00406. The Final Order required Dr. Stepanchuk to pay costs in the amount of \$49,316.69 within ninety (90) days of the Final Order. She is requesting that the Board modify the Final Order to allow her to make monthly payments in the amount of \$3,500 until paid in full.

After discussion, the following action was taken:

Motion by: Dr. Tejera to allow modification of the Final Order to allow Respondent to pay full balance within 15 months. First payment is due within fifteen days of the filing of the order date.
Second: Mr. Andrade
Vote: Unanimous

VI. PETITION FOR VARIANCE OR WAIVER OF RULE

- i. Ana Bernard, DDS

Dr. Bernard was/was not present. She was represented by Ed Bayo, Esq. She has filed a Petition for Variance or Waiver of Rule requesting the Board requesting the board waive the additional educational requirements for reexamination.

- a. Petition of Rule 64B5-2.021, F.A.C.

After discussion, the following action was taken:

Motion: by Dr. Mellado to grant the Petition
Second: Dr. McCawley
Vote: 9/1 Motion carries. Dr. Cherry opposed.

VII. REVIEW OF APPLICATIONS

A. Application for Dental Hygiene License

i. Carly Roberts

Ms. Roberts was present and was sworn in by the court reporter. She was not represented by counsel. Her appearance was requested due to previous criminal history.

After further discussion, the following action was taken:

Motion: by Ms. Johnson to approve the application

Second: Dr. Miro

Vote: Unanimous

ii. Carla Lorena Granadillo

Ms. Granadillo was not present. She was not represented by counsel. Her appearance was requested due to completion of the clinical portion of the ADEX exam on a Manikin after expiration of the emergency order.

After further discussion, the following action was taken:

Motion: by Dr. White to Deny unless she passes the patient exam

Second: Mr. Andrade

Vote: Unanimous

iii. Tatyana Ponizhaylo

Ms. Ponizhaylo was not present. She was not represented by counsel. Her appearance was requested due to completion of the clinical portion of the ADEX exam on a Manikin after expiration of the emergency order.

After further discussion, the following action was taken:

Motion: by Dr. White to Deny unless she passes the patient exam

Second: Mr. Andrade

Vote: Unanimous

B. Application for Dental Radiographer License

i. Jaime Lozada Nieves

Mr. Lozada Nieves was not present. He was not represented by counsel. His appearance was requested due to previous criminal history.

After further discussion, the following action was taken:

Motion: by Dr. White to deny the application due to the criminal conviction related to practice

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Second: Mr. Andrade
Vote: Unanimous

C. Application for Expanded Function Dental Assisting Program

i. Expanded Functions Dental Assistant

Dr. Donald Newman was present and was sworn in by the court reporter. He was not represented by counsel. An application was submitted for an Expanded Function Dental Assisting program. The appearance was requested as the supervising dentist, Dr. Newman has previous discipline against his license.

After discussion, the following action was taken:

Motion: by Dr. Miro to approve the application
Second: by Dr. Mellado
Vote: Unanimous

VIII. REPORTS

A. Board Counsel

i. Rules Report

Mr. Harris provided the Board with a current status of the rules currently in process.

ii. JAPC Correspondence

a. Rule 64B5-13.005, F.A.C

After discussion, the following action was taken:

Motion: by Dr. Tejera to allow board counsel to provide response
Second: Dr. White
Vote: Unanimous

b. Rule 64B5-17, F.A.C.

Board counsel recommended rule amendments to resolve JAPC comments.

CHAPTER 64B5-17 DENTAL PRACTICE AND PRINCIPLES

64B5-17.0011 Change of Address.

Each licensee shall provide written notification to the department of the licensee's current mailing address and place of practice. The term "place of practice" means the primary physical location where the licensee practices the profession of dentistry or dental hygiene. ~~All licensees are required to notify the Board in writing within 10 days of any change in their address.~~

Rulemaking Authority 456.035, 466.004(4) FS. Law Implemented 456.035, 466.013 FS. History—New 3-27-90, Formerly 21G-17.0011, 61F5-17.0011, 59Q-17.0011.

64B5-17.002 Written Dental Records; Minimum Content; Retention.

A dentist shall maintain patient dental records in a legible manner and with sufficient detail to clearly demonstrate why the course of treatment was undertaken.

(1) Dental Record: The dental record shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; X-rays (if taken); examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultation or referrals; and copies of records or reports or other documentation obtained from health care practitioners at the request of the dentist and relied upon by the dentist in determining the appropriate treatment of the patient.

(2) - (6) No Change.

(7) Owner of Dental Practice: All dental records required by this rule and any additional records maintained in the course of practicing dentistry shall be the property of the owner dentist of the dental practice in which the dental patient is seen or treated and the owner dentist shall be ultimately responsible for all record keeping requirements set forth by statute or rule.

(a) The owner dentist is responsible for the records of patients seen or treated by any employee, associate, or visiting dentist.

(b) Multiple owners are severally and equally responsible for the records of patients seen or treated with the dental practice of that dental group.

(c) A lessor or owner dentist is not responsible for the records of an independent dentist who is merely leasing or renting space or staff services for the operation of a separate dental practice within the owner dentist's physical facility.

(8) Electronic Dental Records: Patient records may be kept in an electronic format, provided that the dentist maintains a back-up copy of information stored in the back-up data processing system using disk, tape, or other secure electronic back-up system, onsite or off-site, as long as the back-up system is updated in a time frame that does not exceed seventy-two hours (72 hrs.), to assure that data is not lost due to system failure. Any electronic data system must be capable of producing a hard copy on lawful demand in accordance with and pursuant to federal or state laws and rules.

Rulemaking Authority 466.004(4) FS. Law Implemented 456.057, 456.058, 466.028(1)(m), 466.018(4). FS. History—New 10-8-85, Formerly 21G-17.02, Amended 10-28-91, Formerly 21G-17.002, Amended 11-22-93, Formerly 61F5-17.002, 59Q-17.002, Amended 11-15-99, 4-22-03, 3-14-13, 5-14-15, 4-17-16.

64B5-17.003 Patient Referrals.

(1) Split-fee arrangements relating to the referral of patients by a client to another health care practice are prohibited.

(2) As used herein, the term "health care practice" shall mean a lawful and distinct business entity owned and operated under one name by an individual or group of duly licensed health care providers with facilities at one or more locations such as a solo dental practice, group practice, or professional service corporation, which offers health care services to the public within the limits of the professional licenses held by the owners, employees and agents of the business.

(3) Referral of a patient to another dentist in the same health care practice, so long as any remuneration shared by the dentists is not based upon the number of referrals within the practice and the referral of a patient to another dentist within the practice is in the best interest of the patient, is not a split-fee arrangement.

(4) Fee arrangements between dentists in the same health care practice which are based upon productivity or shared net profits are not split-fee arrangements.

~~(5) Referral of a patient to another health care practice in which the referring dentist or any owner, employee or agent of the referring practice or immediate family member thereof has a financial interest, whether direct, indirect, active or passive in nature, is permitted only if the referral is in the best interest of the patient and the patient first consents to the arrangement by signing a written notification form from the referral dentist which informs the patient of (a) the existence of a financial interest; and, (b) the patient's right to request another referral or to independently~~

~~seek the services recommended. Under no circumstances shall the dentist's financial interest be contingent upon or otherwise related to any referral quota or similar requirement. However, in emergency circumstances where it is in the patient's best interest that such a referral be made without first seeing the patient, the referring dentist shall orally provide the notification required herein. In such emergency situations, the referring dentist shall also make a notation in the patient's record at the time of referral that disclosure was made orally due to emergency circumstances. Written disclosure as required in subsection (5) of this rule, shall be supplied to the patient at the office to which the emergency patient was referred.~~

~~(6) Notification forms signed by patients in accordance with subsection (5), above, shall be maintained in the patient's record.~~

~~(7) The written notification required by this rule shall be made on the appropriate form set forth in rule 64B5-1.021, F.A.C.~~

Rulemaking Authority 466.004(4) FS. Law Implemented 456.0532 FS. History--New 8-30-90, Formerly 21G-17.003, 61F5-17.003, 59Q-17.003, Amended 8-19-97.

64B5-17.004 Emergency Care.

It is the responsibility of every dentist practicing in this State to provide, either personally, through another licensed dentist, or through a reciprocal agreement with another agency, reasonable twenty-four (24) hour emergency services for all patients under his/her continuing care.

Rulemaking Authority 466.004(4) FS. Law Implemented 466.028(1)(t), (x) FS. History--New 4-26-87, Formerly 21G-17.004, 61F5-17.004, 59Q-17.004.

64B5-17.010 Unlicensed Practice of Dentistry.

For the purposes of interpreting sections 466.003(3), 466.026(1)(a) and 466.028(1)(g)(~~bb~~), F.S., the Board shall not consider it to be the unlicensed practice of dentistry for an unlicensed person to furnish, supply, construct or reproduce an appliance to be worn in the human mouth or to verify the patient's shade-selection outside the dentist's direct supervision for fixed partial prosthesis if:

(1) The appliance is a removable mouth protection device that is inserted and removed by the user without adjustment by a licensed dentist (e.g. athletic mouth guards);

(2) A prescription or dentist's order is not required in order to obtain the appliance;

(3) The appliance does not adjust or otherwise affect the natural features of the face or mouth or affect any appliance placed in the mouth by a licensed dentist;

(4) The appliance or device does not have the potential to cause significant or irreparable damage to the dentition and/or oral tissue;

(5) The request for the shade verification is accompanied by a prescription form or work order written by a licensed dentist to meet the requirements of section 466.021, F.S.;

(6) The dentist has previously completed the initial shade selection;

(7) The shade verification site is approved by the dentist and meets all requirements of sections 466.028(1)(u), 466.031(1) and 466.032(1), F.S.;

(8) During shade verification, no appliances or prosthetic devices are to be placed, removed or sealed in the oral cavity at the site except by a licensed dentist on a patient of record in accordance with the requirements of sections 466.024(5) and 466.028(1)(m), F.S.;

(9) During shade verification, contact to the patient is limited to visual contact only;

(10) During shade verification, soft or hard tissue shall not be manipulated;

(11) During shade verification, the patient shall be instructed on how to retract his or her own lip, and the shade tab shall only be held in proximity, but without physical contact to the patient's dentition; and,

(12) During shade verification, photography shall be limited to the patient's visible dentition during smile and the patient's dentition with the patient retracting their lips.

Rulemaking Authority 466.004(4) FS. Law Implemented 466.026(1)(a), 466.028(1)(g), ~~(bb)~~ FS. History—New 9-5-91, Formerly 21G-17.010, 61F5-17.010, Amended 5-9-95, Formerly 59Q-17.010, Amended 10-8-03.

64B5-17.012 Use of Sargenti Material.

The Board of Dentistry has determined pursuant to sections 466.001 and 466.028(1)(x) and (ff), F.S., that the use of “Sargenti Cement” (e.g., N2, RC2B, or RC2W or essentially similar compounds) as an endodontic filling material or cement does not meet the minimum standards of performance for competent dental practice in Florida. The Board specifically finds that “Sargenti Cement” containing paraformaldehyde, when used as an endodontic filling material or cement, can cause severe and irreversible damage to patients. “Sargenti Cement” that is improperly used or which escapes beyond the root canal is much more likely to cause significant damage than incorrectly performed endodontic procedures using alternative filling materials or cements. Most licensed dentists in Florida do not use “Sargenti Cement” in endodontic therapy. Therefore, the use of “Sargenti Cement” as an endodontic filling material does not meet the existing minimum standard of performance for competent dental practice in Florida.

Rulemaking Authority 466.004(4) FS. Law Implemented ~~466.001, 466.004(4)~~, 466.028(1)(x), (ff) FS. History—New 5-29-96, Formerly 59Q-17.012.

64B5-17.013 Proprietorship by Nondentists.

(1) No corporation, lay body, organization, or individual other than a licensed dentist or a professional corporation or limited liability company composed of dentists shall engage in the practice of dentistry through the means of engaging the services, upon a salary, commission, or other means of inducement, of any person licensed to practice dentistry in this state. The provisions of this rule are not applicable to dentists working under any of the settings described in section 466.025, F.S.

(2) No dentist shall enter into any agreement with a nondentist which directs, controls, or interferes with the dentist’s clinical judgment, or which controls the use of any dental equipment or material while such is being used for the provision of dental services. Nor shall any dentist enter into an agreement which permits any entity which itself is not a licensed dentist to practice dentistry, or to offer dentistry services to the public through the licensed dentist. The clinical judgment of the licensed dentist must be exercised solely for the benefit of his/her patients, and shall be free from any compromising control, influences, obligations, or loyalties. To direct, control, or interfere with a dentist’s clinical judgment shall not be construed to include those matters specifically excluded by section 466.0285(1)(c), F.S.

(3) For the purposes of this rule:

(a) The term “clinical” means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry or the quality of dental care being rendered to one or more patients.

(b) The term “control” shall mean to exercise authority or dominating influence over; having the authority or ability to regulate, direct, or dominate.

(4) A licensed dentist may enter into an agreement with a nondentist to receive “Practice Management Services.” The term “Practice Management Services” is defined to include consultation or other activities or services offered by someone other than a Florida licensed dentist regarding one or more of the following types of products or services:

(a) The suitability of dental office space, furnishings and equipment;

(b) Staff necessary to operate a dental practice;

(c) Regulatory compliance expertise and services;

(d) Methods to increase productivity of a dental practice;

(e) Inventory and supplies required to operate a dental practice;

(f) Information systems designed to produce financial and operational data on the dental practice;

(g) Marketing plans or advertising to increase productivity of a dental practice;

(h) Site selection, relocation, design or physical layout of a dental practice, or

(i) Financial services such as accounting and bookkeeping, monitoring and payment of accounts receivable, payment of leases and subleases, payroll or benefits administration, billing and collection for patient services, payment

of federal or state income tax, personal property or intangible taxes, administration of interest expense or indebtedness incurred to finance the operation of the dental practice, or malpractice insurance expenses.

(5) For purposes of implementing the provisions of sections 466.0285, 466.003 and 466.028(1)(g) and (z), F.S., no dentist shall enter into a practice management agreement with anyone other than a dentist or group of dentists which provides or offers to provide, whether by contract or employment, with or without fee, any practice management service which attempts to govern in any way, whether directly or indirectly, the clinical sufficiency, suitability, reliability or efficacy of a particular product, service, process or activity as it relates to the delivery of dental care. Practice management agreements between dentists and anyone other than a dentist or group of dentists shall not:

(a) Preclude or otherwise restrict, by penalty or operation, the dentist of record's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(b) Allow anyone other than a dentist of record or the dentist of record's practice to supervise and control the selection, compensation, terms, conditions, obligations or privileges of employment or retention of clinical personnel of the practice;

(c) Limit or define the scope of services offered by the dentist of record or the dentist of record's practice;

(d) Limit the methods of payment accepted by the dentist of record or the dentist of record's practice;

(e) Require the use of patient scheduling systems, marketing plans, promotion or advertising for the dentist of record or the dentist of record's practice which, in the judgment of the dentist of record or the dentist of record's practice will have the effect of discouraging new patients from coming into the practice or discouraging patients of record from seeing the dentist or postponing future appointments or which gives scheduling preference to one individual, class or group of existing or new patients over another individual, class or group of existing or new patients;

(f) Directly or indirectly condition the payment or the amount of the management fee on the referral of patients, and in addition, the management fee shall reasonably relate to the fair market value of the services provided;

(g) Penalize the dentist of record or the dentist of record's practice for reporting perceived violations of this section to, or seeking clarification from, appropriate state or federal agencies, departments or boards.

(6) For purposes of implementing the provisions of section 466.028(1)(h), F.S., no dentist shall enter into any agreement, or series of agreements, with anyone other than a dentist or group of dentists, which violates the parameters established in subsection (4) or (5), above, and entering into such a contract constitutes a de facto employment of the dentist by a nondentist. Except as permitted by chapter 542, F.S., licensed dentists are prohibited from agreeing not to compete in the provision of dental services with any entity which is not itself a licensed dentist, or which is not licensed or otherwise permitted by law to provide the services which are the subject of the agreement not to compete.

(7) The provisions of this rule are not intended to impair the validity of any contract in existence as of the effective date of this rule. Any existing contract renewed or extended after the effective date of this rule shall be subject to the provisions of this rule.

Rulemaking Authority 466.004 FS. Law Implemented 466.003, 466.028(1)(g), (z), 466.0285, ~~466.0285(1)(e)~~ FS. History—New 10-16-96, Formerly 59Q-17.013, Amended 3-27-02.

After discussion, the following action was taken:

Motion: by Dr. Tejera to open rules for development, to move forward with proposed amendments to include update in 17.004 to his/her and to respond to JAPC with response prepared by board counsel

Second: Dr. Miro

Vote: Unanimous

The Board found there was no economic impact, that no part of this rule or a violation of this rule should be designated as a minor violation, that this rule shall not include a sunset provision. and that a Statement of Regulatory Cost was not necessary and will not need legislative ratification.

iii. Alabama Dental Board

B. Executive Director

i. Legislation Update

Ms. Sapp provided an update of the following bills.

SB184 – An act relating to dental therapy, creating the practice of dental therapy in Florida.

HB517 - An act relating to dentistry and dental hygiene examinations.

Casey Stoutamire, with the Florida Dental Association addressed the Board in support of HB517.

ii. Financial Reports

Ms. Sapp provided the financial reports to the Board for informational purposes

C. Chair

D. Board Members

i. Ms. Hill

1. Council on Dental Hygiene Report

Ms. Hill provided a report from the November 2, 2021 Council on Dental Hygiene Meeting. The Council proposed rule language regarding the administration of nitrous oxide by dental hygienists. The proposed language contained changes to Rules 64B5-14.002, 64B5-14.003, and Rule 64B5-16.006, F.A.C. The proposed language was provided to the Anesthesia Committee at their November 18, 2021 meeting for review as there were changes to Chapter 14 included in the Council's proposed language.

64B5-14.002 Prohibitions.

(1) No Change.

Nitrous-oxide inhalation analgesia. No dentists or dental hygienist licensed in this State shall administer nitrous-oxide inhalation analgesia in the practice of dentistry until they have complied with the provisions of this rule chapter, nor shall a hygienist administer nitrous-oxide to a patient previously sedated. No agents other than nitrous-oxide and oxygen shall be used for inhalation analgesia pursuant to Rule 64B5-14.003, F.A.C.

(3) – (5) No Change.

(6) A hygienist certified by the board to administer local anesthesia shall not administer local anesthesia to a patient sedated by general anesthesia, deep sedation, moderate sedation, or pediatric moderate sedation. If a dentist or dental hygienist has administered nitrous-oxide to the patient, the certified dental hygienist may administer local anesthesia under the direct supervision of the supervising dentist. A patient who has been prescribed a medical drug by their licensed health care provider for the purposes of life functions may be administered local anesthesia by the certified dental hygienist under the direct supervision of the supervising dentist. If, however, the medical drug is prescribed or administered for the purposes of a dental procedure which is intended to induce minimal sedation, the hygienist may not administer local anesthesia to the patient.

(7)-(8) No Change

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

(1) - (3) No Change.

(4) Nitrous-Oxide Inhalation Analgesia.

(a) A dentist may use, or employ and authorize a dental hygienist to administer under indirect supervision, as specified by Rule 64B5-16.006, nitrous-oxide inhalation analgesia on an outpatient basis for dental patients, provided such dentist and dental hygienist have:

1. ~~Has e~~**Completed** no less than a two-day course of training as described in the American Dental Association’s “Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (eff. 10/16), which is hereby incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-11670> or available at <http://www.floridadentistry.gov>, or its equivalent, or

2. ~~Has t~~**Training** equivalent to that described above while a student in an accredited school of dentistry **or dental hygiene**; and,

3. ~~Has a~~ **A** dental nitrous-oxide delivery system with fail-safe features and a 30% minimum oxygen flow.

(b) A dentist utilizing nitrous-oxide inhalation analgesia and such dentist’s assistants ~~s and /~~ 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 level to include one man CPR, two man CPR, infant resuscitation and obstructed airway with a periodic update not to exceed two years. 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 moderate sedation must be currently trained in PALS (Pediatric Advanced Life Support).

(c) – (d) No Change

(e) Dental assistants ~~and dental hygienists~~ may monitor nitrous-oxide inhalation analgesia under the indirect supervision of a dentist if the dental assistant ~~or dental hygienist~~ has complied with the training requirements in paragraph 64B5-14.003(4)(b), F.A.C., and has completed, at a minimum, a two-day course of training as described in the American Dental Association’s

“Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students” or its equivalent. After the dentist **or dental hygienist** has induced a patient and established the maintenance level, the assistant ~~or hygienist~~ may monitor the administration of the nitrous-oxide oxygen making only diminishing adjustments during this administration and turning it off at the completion of the dental procedure.

(5) No Change.

Rulemaking Authority 466.004(4), 466.017(3), (6) FS. Law Implemented 466.017(3), (4), (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 88-96, 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), 8-19-13, 12-16-13, 3-9-14, 7-14-16, 11-13-17, 3-10-20, 8-5-21.

64B5-16.006 Remediable Tasks Delegable to a Dental Hygienist.

(1) No Change

(2) The following remediable tasks may be performed by a dental hygienist who has received training in these procedures in pre-licensure education or who has received formal training as defined by Rule 64B5-16.002, F.A.C., and who performs the tasks under Direct supervision:

(a)- (h) No Change

~~(i) Administer nitrous-oxide oxygen to a special needs or American Society of Anesthesiologists (ASA) Category IV dental patients provided the patient has not been previously sedated and the Dental Hygienist is in full compliance with the requirements of Rule 64B5-14.003(4)(b), F.A.C.~~

(3) – (5) No Change

(6) The following remediable tasks may be performed by a dental hygienist who has received training in these procedures in pre-licensure education or who has received formal training as defined by Rule 64B5-16.002, F.A.C., and who performs the tasks under Indirect supervision:

(a) – (f) No Change

~~(g) Monitor the administration of the Administer nitrous-oxide oxygen to American Society of Anesthesiologists (ASA) Category I – III dental patients making adjustments only during this administration and turning it off at the~~

completion of the dental procedure provided the Dental Hygienist is in full compliance with the requirements of Rule 64B5-14.003(4)(b), F.A.C.; and,

(h) Using adjunctive oral cancer screening medical devices approved by the U.S. Food and Drug Administration.
(7) – (11) No Change.

Rulemaking Authority 466.004(4), 466.017(6), 466.023, 466.024 FS. Law Implemented 466.017(6), 466.023, 466.024 FS. History—New 1-18-89,

Amended 11-16-89, 3-25-90, 9-5-91, 2-1-93, Formerly 21G-16.006, Amended 3-30-94, Formerly 61F5-16.006, Amended 1-9-95, 6-12-97, Formerly 59Q-16.006, Amended 1-25-98, 9-9-98, 3-25-99, 4-24-00, 9-27-01, 7-13-05, 2-14-06, 3-24-08, 7-20-09, 10-17-10, 8-5-12, 6-28-17, 8-29-17, 2-27-18, 12-9-18, 3-25-20, 3-30-21.

Dr. Joseph Calderone, FDA liaison to the board, spoke in support of the rule change.

Jessica Walker, Florida Dental Hygiene Association President elect, waived in support.

After discussion, the following action was taken:

Motion: by Dr. Miro to move forward with the proposed rule language brought forward by the Council on Dental Hygiene including the proposed amendments from the Anesthesia Committee.

Second: Mr. Andrade

Vote: Unanimous

The Board found there was no economic impact, that no part of this rule or a violation of this rule should be designated as a minor violation, that this rule shall not include a sunset provision. and that a Statement of Regulatory Cost was not necessary and will not need legislative ratification.

ii. Dr. Tejera

1. Anesthesia Committee Report

Dr. Tejera provided a report from the November 18, 2021 Anesthesia Committee Meeting.

E. Inspection Report

i. Ron Dilworth

Mr. Dilworth provided the Board with an overview of the dental sedation program. The program has completed 565 inspections since January 1, 2021.

IX. RULE DISCUSSION

A. Rule 64B5-9.011, F.A.C.

64B5-9.011 Radiography Training for Dental Assistants.

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

(2) Dental assistants, who have not graduated from a Board-approved dental assisting school or program, may be certified as dental radiographers if they comply with the following requirements:

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(a) Apply for certification on DH-MQA 1202, Dental Radiography Certification Application (Rev. 05/2019), incorporated herein by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-11194>, and available on the Department of Health's website at <http://floridadentistry.gov/licensing/dental-radiographer/>, and submit the nonrefundable fee prescribed by rule 64B5-15.015, F.A.C.;

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

(c) Document successful completion of a Board-approved course which meets the requirements of subsection 64B5-9.011(3), F.A.C., within 12 months ~~after~~ of completion of the on-the-job training required by subsection 64B5-9.011(2), F.A.C. (3) Only courses which provide training in the following areas may receive Board approval:

(3) No Change

(a)-(h) No Change

(4) No Change

Ms. Sapp suggested including a change in (2)(c) regarding completion of the on-the-job training. The proposed change would replace "after" with "of in regard to completion of the board approved course and the on-the-job training.

After discussion, the following action was taken:

Motion: by Dr. Tejera to accept the proposed rule language with the included oral amendment to (2)(c)

Second: Dr. Miro

Vote: Unanimous

X. DISCUSSION

A. Laws and Rules Course

XI. FOR YOUR INFORMATION

A. Florida Prescription Drug Monitoring Program (PDMP) Monthly Report

B. Report of the 17th Annual Meeting of the American Board of Dental Examiners (ADEX)

C. ULA Spotlight

D. American Association of Orthodontists

XII. NEW BUSINESS

A. 2022 Elections

Motion: by Dr. McCawley to nominate Dr. Tejera for Chair. Dr. Tejera accepted.

Second: by Mr. Andrade

Vote: Unanimous

Motion: by Dr. McCawley to nominate Mr. Andrade for Vice-Chair. Mr. Andrade accepted.

Second: by Dr. Miro

Vote: Unanimous

B. Licensure Ratification Lists

After discussion, the following action was taken:

Motion: by Dr. Tejera to approve the licensure ratification list

Second: by Dr. White

Vote: Unanimous

C. Anesthesia Ratification List

After discussion, the following action was taken:

Motion: by Dr. Tejera to approve the anesthesia ratification list

Second: by Dr. White

Vote: Unanimous

XIII. OLD BUSINESS

A. Approval of Board Meeting Minutes – August 13, 2021

After discussion, the following action was taken:

Motion: by Dr. Tejera to approve the meeting minutes

Second: by Dr. McCawley

Vote: Unanimous

B. Approval of Council on Dental Hygiene Minutes – November 2, 2021

After discussion, the following action was taken:

Motion: by Dr. Tejera to approve the meeting minutes

Second: by Dr. White

Vote: Unanimous

XIV. ADJOURNMENT

There being no further business, the meeting was adjourned at 12:15