

SOUTH CAROLINA BOARD OF DENTISTRY LEGISLATIVE COMMITTEE MEETING

Synergy Business Park, Kingstree Building, Room 111
110 Centerview Drive, Columbia, SC
July 19, 2002

MINUTES

On Friday, July 19, 2002, at 9:00 a.m., Dr. Dennis W. Newton, Jr., of West Columbia, Vice President of the Board and Chairman of the Legislative Committee, called the meeting to order. Members of the Committee present were Dr. Michelle D. Bedell, of Blacksburg, Tanya S. Riffe, R.D.H., of Ravenel, and Ms. Genie M. Duncan of West Columbia. It was noted for the record that Dr. William D. Cranford, Jr., of Rock Hill, was excused from the meeting as he was on vacation.

Public notice of the meeting was properly posted at the Board of Dentistry office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act. A quorum was present at all times.

Randall Bryant, Assistant Deputy Director, POL Office of Business and Related Services, Richard Wilson of the Office of General Counsel, Sandra Dickert, Administrative Assistant, Investigator James Evans, Investigator Melissa Slagle, Velma Stork, Administrative Assistant, and Terri Zeman, Administrative Assistant, were also in attendance.

Dr. Newton explained that this meeting had been convened to discuss public health dentistry in South Carolina, the scope of practice of oral surgery in South Carolina, and the South Carolina Dental Practice Act. He introduced the members of the Legislative Committee and the staff present and asked the attendees to introduce themselves. The following groups were represented:

South Carolina Dental Association (SCDA);
South Carolina Dental Hygienists' Association (SCDHA);
South Carolina Committed Dental Hygienists (SCCDH);
South Carolina Department of Health and Environmental Control (DHEC);
Palmetto Medical, Dental and Pharmaceutical Association (PMDPA);
South Carolina Dental Hygiene Educators Association (SCDHEA), and
Health Promotion Specialists (HPS).

Attendees included: Giovanna Becker (SCCDH), Bryan Clemenzen (HPS), Richard Davis (SCDA), Beverly Dunbar (SCDHA and SCDHEA), Thomas Edmonds (SCDA-Legislative), Dr. Lee Gardner (SCDA), Felicia L. Goins, (SCDA), Dr. Robert C. Gordon (SCDA and PMDPA), Joyce Greer (SCCDH), Adrienne Huffman (SCDA), Dr. Raymond Lala (DHEC), Phil Latham (SCDA), Dr. Anthony Mollica (SCDA), Dr. Douglas Rawls (SCDA), Dr. Lynn Wallace

(SCDA), Sherie G. Williams (SCDHA), Craig Young (SCDA-Legal), and James H. Zorn, Jr. (SCDA).

Dr. Newton gave a brief overview of the Legislative Committee's responsibilities including working with LLR's Legislative Liaison Office to monitor proposed legislation that impacts the dental profession, and making recommendations to the full Board regarding such proposals. He noted that the Committee had met on April 12, 2002 at which time proposed legislation (H.4398) regarding public health dentistry had been discussed. It was the consensus of the Committee that it was in support of the legislation in principle; however, the Committee expressed initial concerns with certain aspects of the proposed legislation. The Committee's concerns included 1) responsibilities of the Board; 2) responsibilities of DHEC; 3) creation of a different standard of care; 4) the Memorandum of Agreement (MOA) needed clarification; 5) does the DHEC Public Health Dentist/Director have to be a South Carolina licensed dentist?; 6) questions regarding funding, and 7) clarification of "employed within the public health systems" (Section 40-15-110). Dr. Newton stated that in an effort to fulfill the Board's responsibility of protecting the public and, at the same time, ensure the promotion of public health dentistry goals and supporting access to care, the meeting today had been scheduled.

Dr. Newton noted that when the law was amended (Sections 40-15-80 and 40-15-85) in 2000 (Act No. 298), it was never the intent of the Board or the S.C. Dental Association to authorize independent practice by dental hygienists. When confusion arose among some practitioners regarding the intent of the phrase "authorized the procedures to be performed," the Board determined that in order to protect the dental health of patients in South Carolina, it was necessary to clarify the type of authorization of procedures to be performed pursuant to 40-15-85(B) relating to the general supervision of dental hygienists practicing in school settings and elsewhere. The Board believes that the phrase "authorized the procedures to be performed" (Section 40-15-85(B)) requires the dentist to perform a clinical examination of the patient and determine the need for any specific treatment.

Dr. Rawls (SCDA) stated that the Dental Association feels it is important that the dentist examine every patient and authorize treatment prior to a dental hygienist providing services. Dr. Lala (DHEC) responded that while in theory he does not disagree, in his opinion, it is impractical to believe that this system will work in South Carolina. He noted that there is a distinct difference in private and public health dentistry. In private practice - the individual is the patient; in public health dentistry, the population is the patient.

Dr. Lala reported that DHEC has designed a program for the purpose of establishing a school based dental program in public schools to provide dental assessment, treatment and/or referral, follow-up and case management by means of a Memorandum of Agreement (MOA) with contractors to provide services. He stated that a school-based dental prevention program should address the following areas: 1) assessment of disease burden in the population served and schools' needs by select population-targeting method (reduced and free lunch programs, etc.); target program based on risk of disease; and target school and participants according to economic need; 2) deliver dental

preventive services; 3) increase education efforts for individual and community awareness, and 4) referral and follow up with community dentists for definitive restorative care. The MOA outlines the scope of services and terms and conditions. Dr. Lala stated that all students identified with urgent needs must receive treatment for the urgent conditions before receiving school-based preventive services.

Dr. Rawls stated that the South Carolina Dental Association endorses the public health program but feels it is valuable for the dentist to examine every patient. He expressed concern that a double standard of care will be created. Mr. Clemenz (HPS)) stated that when the Board's emergency regulation was in place and the dentist had to examine each patient prior to the hygienist providing services, the program was impractical. He stated that HPS looks forward to working with the Board in an effort to enhance this program so as not to impede access to care for those in need. Mr. Clemenz noted that Dr. Lala's program provides comprehensive care in a given area by working and communicating with local resources.

Mrs. Dunbar (SCDHA) stated that, just as there is no requirement for a medical doctor to examine a patient before immunization shots are given, it is not feasible for a dentist to examine each patient prior to a hygienist providing preventive services. She reminded all that "prevention" is the mindset everyone needs to have at this time. Mr. Zorn responded that the Dental Association had proposed an amendment to Section 40-15-110 but that the Dental Board had not agreed with the change. The proposed amendment was read as follows: "The public health dental program, through the State Director of Public Health Dentistry, or the designee of the Department of Health and Environmental Control, shall establish, through agreements with participating parties, a framework to coordinate all school and community clinics and mobile dental programs. All parties other than those offering voluntary, non-compensated preventive and restorative care in in-school and in-community settings and van programs must sign memorandums of agreement with DHEC as established in the framework heretofore mentioned."

It was noted that representatives from the South Carolina School Board Association, the South Carolina Department of Education, and the South Carolina Nursing Home Association should be invited to attend the next meeting of the Board's Legislative Committee.

Mrs. Dunbar stated that the MOA provides a standard under which the dental hygienist operates in school settings, and that the issue of private practice and the word "authorization" deal with a separate issue. A concern of the Board is the responsibility of disciplining hygienists that work in school settings under the public health system if a violation of the Dental Practice Act occurs. It was noted that Dr. Lala does not employ hygienists; they are contract employees. If a hygienist does not adhere to the terms of the MOA, or violates the Dental Practice Act, he/she would fall under the Board's responsibility. Mr. Wilson stated that a line needs to be clearly established as to whom the responsibility for these individuals falls. Dr. Lala noted that when the MOA was first drafted, he asked for the Board's input at that time. Dr. Newton stated that there needs to be something very clear and concise with regard to a mass screening by public health

versus an examination performed by a dentist and subsequent services provided by a hygienists. Mrs. Dunbar stated that there are different levels of an examination: inspection / screening / partial examination / full examination. Dr. Anthony Mollica noted that the problem seems to be private enterprise versus public health. Ms. Becker stated that at the Charleston County Public Health Department, the hygienist did the screening prior to the dentist seeing the patient. She noted that the dentist would see the patient somewhere along the process and that the dentist made the final decisions regarding treatment. Mr. Clemenz noted that the MOA requires that urgent needs identified during a screening must be met before preventive services are provided by a hygienist. Dr. Newton informed the group that the Committee would take all of this information back to the full Board. He requested the Board be provided another copy of the MOA for its information and review. Mrs. Riffe referred everyone to take a look at the definitions of public health and private practice contained in the Surgeon General's Report.

At 10:35 a.m., following a ten-minute break, Dr. Newton asked the Board staff to incorporate the SC Dental Association's proposed amendment to Section 110 into the Dental Practice Act and provide everyone attending the meeting with a copy. He asked all parties to review the Practice Act with amendments and to send comments to the Board office within thirty days.

The Board discussed the terms "general supervision" and "authorization" as they relate to Section 40-15-85(B). Dr. Newton read the American Dental Association's (ADA) definitions of "authorization" and "oral diagnosis" as follows:

"Authorization" - the act by a dentist of giving permission or approval to the dental auxiliary to perform legally allowable functions, in accordance with the dentist's diagnosis and treatment plan.

"Oral Diagnosis" - the determination by a dentist of the oral health condition of an individual patient, achieved through the evaluation of data gathered by means of history taking, direct examination, patient conference, and such clinical aids and tests as may be necessary in the judgment of the dentist.

Following a discussion of the ADA's definitions above, the Committee recommended the Board staff amend the definition of "authorization," and, once amended, incorporate these definitions into Section 40-15-85(B) as follow. The underlined words represent the Committee's amendments to the ADA's definition of "authorization."

"Authorization" means the act by a dentist of giving permission or approval to the dental auxiliary to perform legally allowable functions, in accordance with the dentist's oral diagnosis and treatment plan for each patient.

The Committee having agreed on the definitions of "authorization" and "oral diagnosis," Dr. Newton asked representatives of the other organizations if there were any objections, to which none were heard. Ms. Dunbar stated that she would need time to review the

materials before commenting.

Dr. Newton asked the Board staff to provide all parties at the meeting with a copy of the revised draft of the Dental Practice Act and asked the parties to submit written comments to the Board office within thirty days.

The Committee next discussed the topic of the scope of practice of oral surgery in South Carolina. Dr. Newton reported that the Virginia Dental Board had worked with their Medical Association to get a law passed to define certain procedures. He noted that a concern is that someone without proper training may want to do some of the procedures without having the expertise to do those procedures. Dr. Newton stated that Dr. Finkbine, President of the South Carolina Board of Dentistry, had recently written a letter to Dr. Louis E. Costa, II, of the South Carolina Board of Medical Examiners, advising that the Board agrees in principle with the Virginia program and feels that it is a workable solution to the problems in South Carolina. Dr. Finkbine suggested that a group, consisting of members from the Medical Board, Dental Board, Oral and Maxillofacial Society and the Medical University of South Carolina (MUSC), be established and meet to fine-tune the criteria desired and finalize plans for the practice in South Carolina.

Mr. Bryant reviewed the "Engine" legislation with the Committee members and meeting participants. He stated that the "Engine" is the result of a review of all forty of the professional and occupations boards' practice acts. It reformats the practice acts, rennumbers the statutes and provides additional statutory language that fills in the gaps where needed. Mr. Bryant stated that the Department of Labor, Licensing and Regulation (LLR) serves as the "administrative arm" to all boards and commissions. In response to a question regarding the establishment of fees, he responded that it is the Agency's responsibility to set fees. Mr. Wilson stated that fees have to be adequate to fund the programs and that LLR consults with the boards in determining increases or decreases in fees. Mr. Zorn raised a question regarding Section 40-1-80 of the Engine that states, "If the director has reason to believe that a person has violated a provision of this article ... the director may initiate an investigation." He asked if the director could choose not to authorize an investigation? Mr. Bryant responded that the Board's administrator (Mr. Alvey) and the Assistant Deputy Director (Mr. Bryant) would, together, be responsible for prioritizing complaints and that Mr. Alvey is the director's "designee" in such cases. Mr. Wilson was asked if he could see 40-1-80 slowing down the investigative process to which he responded "No."

In response to a question from Mrs. Dunbar as to whether this reformatting of the practice act was mandatory, Mr. Bryant responded that it was "strongly suggested." In response to a question from Dr. Newton as to whether the reformatting of the practice act would automatically change the Investigative Review Committee (I.R.C.) composition of the Board, Mr. Bryant responded, "No."

Mr. Wilson stated that Chapter I of Title 40 is the "Engine" legislation and that Dentistry is Chapter 15. He noted that the Engine fills in gaps in the practice acts and that where there is a conflict between the practice act and the Engine, the practice act controls. Mr. Bryant requested the Board staff mail a copy of the draft Dental Practice Act with the

"Engine" legislation incorporated into it to all parties.

Mrs. Dunbar stated that some of the Board's policies should be formulated into Board regulations for clarification purposes. When asked to give an example of such a policy, she cited the Board's policy on credentialing of dental hygienists for licensure. Mr. Zorn asked the Board staff to e-mail him a copy of the Board's written policy on oral examination for licensure of hygienists.

There being no further business, the meeting adjourned at 12:00 p.m.

Respectfully submitted,

Dennis W. Newton, Jr., D.D.S.
Chairman, Legislative Committee