



TEXAS STATE BOARD OF DENTAL EXAMINERS

333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701-3942

Phone: (512) 463-6400 | Fax: (512) 463-7452

BOARD MEETING MINUTES

August 12, 2016

1. CALL TO ORDER – BOARD MEETING.

Dr. Austin called the meeting of the Texas State Board of Dental Examiners (TSBDE) to order at 8:42 a.m.

2. ROLL CALL.

Dr. Tillman called the roll. It was noted for the record that a quorum was present.

a. Members Present:

Dr. Steven J. Austin	Presiding Officer
Dr. Kirby Bunel Jr.	Member
Ms. Renée S. Cornett, RDH	Member
Dr. D. Bradley Dean	Member
Dr. Diane Garza	Member
Dr. Bryan N. Henderson	Member
Dr. Christie M. Leedy	Member
Mr. Timothy J. O'Hare	Member
Ms. Lois M. Palermo, RDH	Member
Dr. Jorge E. Quirch	Member
Dr. M. David Tillman	Member
Mr. Richard D. Villa	Member
Mr. Lewis M. White	Member
Dr. Jason A. Zimmerman	Member

b. Members Absent - Excused:

Ms. Emily W. Christy	Member
----------------------	--------

c. Staff Present:

Ms. Kelly Parker	Executive Director
Ms. Nycia Deal	General Counsel
Dr. Brooke Bell	Director of Dental Division
Ms. Leticia Kappel	Director of Finance and Administration Division
Ms. Lisa Jones	Director of Investigations Division
Ms. Christine Mendez	Director of Licensing Division

3. REVIEW AND APPROVAL OF PAST MINUTES FROM THE JUNE 3, 2016 BOARD MEETING.

A MOTION WAS MADE BY DR. QUIRCH AND SECONDED BY DR. LEEDY TO APPROVE THE MINUTES AS AMENDED.

(FOR – 14/ OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

4. DISCUSSION AND ACTION ON PROPOSED CASE RESOLUTIONS.

4.1. Agreed Settlement Orders.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY MS. PALERMO TO APPROVE THE AGREED SETTLEMENT ORDERS AS PRESENTED.

(FOR – 14/ OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

The following Agreed Settlement Order was pulled:

• **2013-0004**

A MOTION WAS MADE (AFTER AGENDA ITEM NO.12) BY MR. O'HARE, AND SECONDED BY DR. HENDERSON TO NOT ACCEPT THIS AGREED SETTLEMENT ORDER. THE CONDITIONS BEING, TO RETURN THIS CASE BACK TO STAFF AND THE ATTORNEY TO RE-EVALUATE THE SANCTION.

(FOR – 8/ OPPOSED – 1 / ABSTAIN – 0) MOTION CARRIES.

4.2. Remedial Plans.

A MOTION WAS MADE BY DR. HENDERSON AND SECONDED BY DR. QUIRCH TO APPROVE THE REMEDIAL PLANS AS PRESENTED.

(FOR – 14/ OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

4.3. Consent Orders.

A MOTION WAS MADE BY DR. QUIRCH AND SECONDED BY DR. LEEDY TO APPROVE THE CONSENT ORDERS AS PRESENTED.

(FOR – 14/ OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

4.4. Modification Orders.

There were no Modification Orders to be presented.

4.5. Dismissals.

A MOTION WAS MADE BY MS. CORNETT AND SECONDED BY DR. LEEDY TO APPROVE THE DISMISSALS AS PRESENTED.

(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

5. PRESIDING OFFICER REPORT.

Dr. Austin presented the Presiding Officer Report.

6. MISCELLANEOUS REPORTS.

6.1. Professional Recovery Network (PRN) Report.

Ms. Abel presented the PRN report.

6.2. Western Regional Examining Board Dental Hygiene Report.

Ms. Palermo presented the WREB HERB report.

6.3. Western Regional Examining Board Report.

Dr. Dean presented the WREB report.

7. DISCUSSION AND ACTION CONCERNING COMMITTEES AND COMMITTEE REPORTS

7.1. Anesthesia Committee.

Dr. Austin called on Dr. Bunel to address the Board to discuss the Anesthesia Committee. Dr. Bunel advised that the recent Anesthesia meeting was held on August 5, 2016.

- The Anesthesia Committee recommended to the Board that the Board direct Staff and the Committee to review Chapter 110 and make propose changes for consideration by the full Board.
- The Anesthesia Committee recommended to the Board that the Board direct Staff and the Committee to review Anesthesia Educational Programs, including transitional programs.
- The Anesthesia Committee recommended to the Board that the Board direct Staff and the Committee to develop written emergency plans for requirements for Anesthesia Permit holders.
- The Anesthesia Committee recommended to the Board that the Board direct Staff and the Committee to determine what data to record when tracking trends in anesthesia related cases.

A MOTION WAS MADE BY MR. WHITE AND SECONDED BY DR. GARZA TO ADOPT THE RECCOMENDATIONS OF THE ANESTHESIA COMMITTEE.
(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

A MOTION WAS MADE TO CALL THE QUESTION BY DR. TILLMAN AND SECONDED BY MS. PALERMO FOR THE FOUR ITEMS IN SECTION 7.1.
(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

7.2. Licensing Committee.

Dr. Zimmerman led the discussion of the Licensing Committee's report. Dr. Zimmerman stated the recent Licensing Committee Meeting was held on August 5, 2016. Dr. Zimmerman called on Ms. Deal to state the applicable law pertaining to licensing. Dr. Zimmerman called on Ms. Mendez to present the specific items for discussion.

7.2.1. Discussion and Action on Application for Special Consideration or Exception to Board Rules.

7.2.1.1. Larry Byrd, DDS.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY DR. QUIRCH TO DENY DR. BYRD'S APPLICATION FOR EXCEPTION TO BOARD RULES.
(FOR – 13 / OPPOSED – 1 / ABSTAIN – 0) MOTION CARRIES.

7.2.2. Discussion and Action on Applications for Licensure/Registration.

7.2.2.1. Application 2016Q4DEN1.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY DR. GARZA TO DENY APPLICATION 2016Q4DEN1.
(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

7.2.2.2. Application 2016Q4DEN2.

A MOTION WAS MADE BY DR. QUIRCH AND SECONDED BY MS. CORNETT TO DENY APPLICATION 2016Q4DEN2.
(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

7.2.2.3. Application 2016Q4DEN3.

A MOTION WAS MADE BY MS. PALERMO AND WAS NOT SECONDED BECAUSE THE FIRST MOTION WAS MADE BY A COMMITTEE MEMBER TO DENY APPLICATION 2016Q4DEN3.
(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

7.3.3. Discussion and Action on Training Programs

7.3.3.1. UT School of Dentistry at Houston – Coronal Polishing Course

A MOTION WAS MADE BY MS. CORNETT AND SECONDED BY DR. LEEDY TO APPROVE THE UT SCHOOL OF DENTISTRY AT HOUSTON – CORONAL POLISHING COURSE WITH CONDITIONS.

CONDITIONS BEING THAT THE SCHOOL SPONSORSHIP BE INDICATED ON ALL COURSE MATERIALS AND FOR AN OBJECTIVE TO BE ADDED FOR THE JURISPRUDENCE TO BE REQUIRED AS PART OF THIS COURSE.

(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

7.3.3.2. Texas Women’s University Dental Hygiene Program – Nitrous Course

A MOTION WAS MADE BY MS. CORNETT AND SECONDED BY DR. BUNEL TO APPROVE THE TEXAS WOMEN’S UNIVERSITY DENTAL HYGIENE PROGRAM – NITROUS COURSE WITH CONDITIONS. CONDITIONS BEING THAT THE AUDIENCE SHOULD BE BETTER DEFINED, ALONG WITH THE MISSING CONTENT OF INFECTION CONTROL AND RECOGNITION OF MEDICAL EMERGENCIES BE ADDRESSED IN THE COURSE CURRICULUM DOCUMENTS.

8. PUBLIC COMMENT.

Ms. Hahn recommended that Texas become a member of CRDTS licensing and testing.

The Presiding Officer called for a break at 10:55 a.m.

The meeting reconvened at 11:13 a.m.

9. DISCUSSION AND ACTION ON RULES AND DISCIPLINARY MATRIX.

9.1. Discussion regarding disciplinary matrix.

9.1.1 Modification of the disciplinary matrix.

There were no modifications to the disciplinary matrix.

9.2. Discussion regarding proposal of rule amendments.

The following Rule Amendments were proposed:

9.2.1. 22 Tex. Admin. Code 107.49, Proposals for Decision.

9.2.2 22 Tex. Admin. Code 107.50, Filing of Exceptions, Briefs, and Replies.

9.2.3. 22 Tex. Admin. Code 107.51, Findings of Fact and Conclusions of Law.

9.2.4. 22 Tex. Admin. Code 107.52, Oral Argument.

9.2.5. 22 Tex. Admin. Code 107.53, Final Decisions and Orders.

9.3. Discussion regarding proposal of new rules.

9.3.1. New 22 Tex. Admin. Code 108.15, Written Emergency Plans.

A MOTION WAS MADE BY DR. HENDERSON TO PROPOSE OPTION NO. 1 OF 108.15 AND SECONDED BY DR. WHITE TO BE PUBLISHED IN THE REGISTER AS NEW RULE 108.

(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

9.3.2. New 22 Tex. Admin. Code 110.11, Written Emergency Plans.

A MOTION WAS MADE BY DR. HENDERSON TO PROPOSE OPTION NO. 1 OF 108.15 AND SECONDED BY DR. WHITE TO BE PUBLISHED IN THE REGISTER AS NEW RULE 108.

(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

9.3.3. New Chapter 111, Standards for Prescribing Dangerous Drugs and Controlled Substances.

A MOTION WAS MADE BY DR. BUNEL AND SECONDED BY DR. DEAN TO PROPOSE NEW RULE 111 WITH THE EXCEPTION OF CONTINUING EDUCATION WILL BE REQUIRED FOR 2 HOURS EVERY 3 YEARS.

(FOR – 14 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

Dr. Bunel, Dr. Dean and Dr. Zimmerman stepped out of the meeting at 12:35 p.m.

Dr. Dean and Dr. Zimmerman returned at 12:37 p.m.

Dr. Bunel returned at 12:38 p.m.

9.4. Discussion and action regarding adoption of proposed repeal of rules.

The following proposed repeal of rules were adopted:

- 9.4.1. 22 Tex. Admin. Code 107.100, Receipt, Processing, and Coordination of Complaints.
- 9.4.2. 22 Tex. Admin. Code 107.101, Preliminary Inquiry of a Complaint.
- 9.4.3. 22 Tex. Admin. Code 107.102, Commencement of an Official Complaint.
- 9.4.4. 22 Tex. Admin. Code 107.103, Disposition of an Official Complaint.
- 9.4.5. 22 Tex. Admin. Code 107.104, Confidentiality of Investigations.
- 9.4.6. 22 Tex. Admin. Code 107.105, Request for Information and Records from Licensees.
- 9.4.7. 22 Tex. Admin. Code 107.106, Use of Expert Panel.
- 9.4.8. 22 Tex. Admin. Code 107.107, Selection of Expert Reviewers.
- 9.4.9. 22 Tex. Admin. Code 107.108, Determination of Competency by the Expert Panel.
- 9.4.10. 22 Tex. Admin. Code 107.110, Compliance.

9.5. Discussion and action regarding adoption of proposed new rules.

The following new rules were adopted:

- 9.5.1. 22 Tex. Admin. Code 100.6, Executive Committee of the Board.
- 9.5.2. 22 Tex. Admin. Code 100.7, Standing Committees of the Board.
- 9.5.3. 22 Tex. Admin. Code 100.8, Ad Hoc Committees of the Board.
- 9.5.4. 22 Tex. Admin. Code 100.9, Advisory Committees and Workgroups Established by the Board.
- 9.5.5. 22 Tex. Admin. Code 100.11, Stakeholder Meetings Convened by Staff.
- 9.5.6. 22 Tex. Admin. Code 107.100, Definitions.
- 9.5.7. 22 Tex. Admin. Code 107.101, Responsibilities of Investigations Division and Dental Practice Division.
- 9.5.8. 22 Tex. Admin. Code 107.102, Complaints.
- 9.5.9. 22 Tex. Admin. Code 107.103, Preliminary Investigation of a Complaint.
- 9.5.10. 22 Tex. Admin. Code 107.104, Official Investigation of a Complaint.
- 9.5.11. 22 Tex. Admin. Code 107.105, Collection of Information and Records.
- 9.5.12. 22 Tex. Admin. Code 107.106, Confidentiality of Investigations.

- 9.5.13. 22 Tex. Admin. Code 107.107, Use of Dental Review Panel.
- 9.5.14. 22 Tex. Admin. Code 107.108, Assignment of Dental Review Panel Members.
- 9.5.15. 22 Tex. Admin. Code 107.109, Review by Dental Review Panel Members.

10. DISCUSSION AND ACTION CONCERNING NEW COMMITTEE BUSINESS.

Dr. Austin will announce the Committee Appointments within the week.

11. AGENCY ACTIVITY REPORTS.

11.1. Executive Director's Report.

Ms. Parker summarized her written report which was available on the board member website.

Ms. Parker introduced the new Executive Assistant, Amanda LaFuenta. Ms. Parker led a discussion on the current Sunset process including the recently released modifications. She noted the Decision Hearing is scheduled for August 22, 2016.

Ms. Parker recognized the reorganization of the Enforcement Division and the new positions it created. She explained that effective September 1, 2016, Ms. Deal will be the Chief Legal Officer, Mr. Tyler Vance will be the General Counsel and Mr. Alex Phipps will be the Litigation Manager. Ms. Parker also informed the Board about recent meetings with the Office of Inspector General and other key legislators.

Ms. Parker advised the Board that the Memorandum of Understanding with the Secretary of State's Office had been fully executed regarding the Dental Service Organization information. She noted that the first data release will be on August 12, 2016. Ms. Parker also explained that the agency was currently going through the Legislative Appropriations Request process and discussed the exceptional item requests.

Ms. Parker reported the current statistics for cases that were older than 2 years old and still open at the agency. Ms. Parker informed the Board that the PaperVision work flow system, which was funded by HB3201, will go into a piloting phase on September 1, 2016.

11.2. Finance and Administration Division Report.

Ms. Kappel directed staff and members to the uploaded Expenditure Report, which was available on the Board Member website. Ms. Kappel briefly touched on the Legislative Appropriations Request and invited questions. Ms. Kappel noted that the Board could expect to see more information than what was previously provided regarding finances at each quarterly meeting.

11.3. Licensing Division Report.

Ms. Mendez presented the Licensing Division report which included information on the current processing times for new applicants and new staff members.

11.4. Joint Report of the Investigations and Dental Practice Divisions.

Ms. Jones began the joint discussion and noted that she provided three different reports for this meeting:

- Consolidated Enforcement Report
- Enforcement Group Quarterly Statistics Report
- Investigations Days to Case Resolution Report

Dr. Bell led the discussion on Dental Practice Divisions. Dr. Bell advised that there are currently 150 reviewers, with 129 of those reviewers being active. She also noted that there are 17 applicants for DRP.

11.5. Legal Division Report.

Ms. Deal introduced the new Staff Attorney, Helen Kelley. Ms. Deal led the discussion on the Informal Settlement Conference (ISC) schedules, specifically noting that during this upcoming fiscal year there are approximately 40-42 ISCs scheduled. .

12. DISCUSSION AND ACTION ON CASES HEARD BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS (SOAH).

12.1. Docket No. 504-16-3438, Julio Salmeron, Registered Dental Assistant No. 10232.

Consideration of the Administrative Law Judge's Proposal for Decision, Recommendations, and Board Action.

A MOTION WAS MADE BY DR. BUNEL AND SECONDED BY MR. O'HARE TO ACCEPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE PROPOSAL FOR DECISION AS WRITTEN, ADOPT THE ORDER OF THE BOARD RECOMMENDED BY STAFF FOR JULIO SALMERON'S DENTAL ASSISTANT LICENSE NO. 10232.

(FOR – 10 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

12.2. Docket No. 504-15-4769, Jesse Martin Taylor III, DDS, Texas Dental License No. 15101.

Consideration of the Administrative Law Judge's Proposal for Decision, Recommendations, and Board Action.

Dr. Taylor was present and made a testimony.

A MOTION WAS MADE BY DR. TILLMAN AND SECONDED BY MS. CORNETT TO ACCEPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE PROPOSAL FOR DECISION AS WRITTEN, ADOPT THE ORDER OF THE BOARD RECOMMENDED BY STAFF FOR MR. JESSE MARTIN TAYLOR III'S LICENSE NO. 15101

(FOR – 8 / OPPOSED – 1 / ABSTAIN – 0) MOTION CARRIES.

12.3. Docket No. 504-16-4131, Shaurat R. Malik, DDS, Texas Dental License No. 19587.

Consideration of the Administrative Law Judge's Order No. 1 Dismissing Case, Recommendations, and Board Action.

A MOTION WAS MADE BY MR. O'HARE AND SECONDED BY DR. TILLMAN TO ACCEPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE PROPOSAL FOR DECISION AS WRITTEN, ADOPT THE ORDER OF THE BOARD RECOMMENDED BY STAFF FOR SHAURAT R. MALIK'S DENTAL LICENSE NO. 19587.

(FOR – 9 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

12.4. Docket No. 504-16-4162, David Medford, DDS, Texas Dental License No. 13112.

Consideration of the Administrative Law Judge's Order No. 1 Dismissing Case, Recommendations, and Board Action.

A MOTION WAS MADE BY DR. BUNEL AND SECONDED BY MS. CORNETT TO ACCEPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE PROPOSAL FOR DECISION AS WRITTEN, ADOPT THE ORDER OF THE BOARD RECOMMENDED BY STAFF FOR DAVID MEDFORD'S DENTAL LICENSE NO. 13112.

(FOR – 8 / OPPOSED – 1 / ABSTAIN – 0) MOTION CARRIES.

ADDITIONAL PUBLIC COMMENT.

Mr. James Andry, MD, explained the Dental Treatment of Sleep Disorders, Rule 108.12 and Texas Occupational Code for Dentists/ Dentist Practice Act.

13. ANNOUNCEMENTS.

- Dr. Austin announced the next Board Meeting is set for Friday, November 18, 2016

- The TSBDE Budget Hearing will take place on August 17, 2016, noting, Ms. Parker and Ms. Kappel will attend on behalf of the Board.
- The Sunset Decision Hearing will be held on August 22, 2016. Ms. Parker and Ms. Deal will attend the hearing on behalf of Board.

14. ADJOURN.

A MOTION WAS MADE BY MR. O'HARE AND SECONDED BY DR. HENDERSON TO ADJOURN THE MEETING AT 3:11 P.M.

(FOR – 9 / OPPOSED – 0 / ABSTAIN – 0) MOTION CARRIES.

EXECUTIVE SESSION: The board reserves the right to conduct a closed meeting to discuss any posted agenda items as authorized by law. Specifically, the board may enter executive session to conduct a private consultation with its attorney to seek advice about pending or contemplated litigation or a settlement offer, pursuant to Section 551.071 of the Texas Government Code.

* **Discussion of future rulemaking topics is not limited to the posted discussion items.**

** **Considerations named under agenda items 10.5 and 10.6 may be taken out of order as needed.**

Steven J. Austin, DDS
Presiding Officer
November 18, 2016

David Tillman, DDS
Board Secretary
November 18, 2016