



TEXAS STATE BOARD OF DENTAL EXAMINERS

333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701-3942
Phone (512) 463-6400 Fax (512) 463-7452

BOARD MEETING MINUTES April 16, 2004

1. **CALL TO ORDER:** Dr. Irons called the meeting of the Texas State Board of Dental Examiners to order on April 16, 2004. The time was 8:03 a.m.

2. **ROLL CALL:** Dr. McDonald called the roll. It was noted for the record that a quorum was present.

a. Members Present:

Dr. J. Kevin Irons	Presiding Officer
Dr. Gary W. McDonald	Secretary
Mr. Oscar Garcia	Public Member
Ms. Helen McKibben, RDH	Member
Dr. Martha Malik	Member
Dr. Norman Mason	Member
Ms. Marti Morgan	Public Member
Dr. George Strunk	Member
Dr. Paul Stubbs	Member
Dr. Nathaniel Tippit	Member
Dr. Juan Villarreal	Member
Mr. Charles Wetherbee	Public Member

b. Members Absent:

Ms. Tammy Allen, RDH	Member (Excused)
Ms. Amy Juba	Public Member (Excused)
Ms. Phyllis Stine	Public Member (Excused)

c. TSBDE Staff Present:

Mr. Bobby D. Schmidt, M.Ed.	Executive Director
Mr. Ben Ablon	Director of Enforcement
Mr. Fread Houston	General Counsel
Ms. Carol McPherson	Director of Administration, Finance and Personnel
Ms. Sherri Sanders	Director of Licensing and Examinations
Mr. Lorenzo Nieto	Attorney
Ms. Vicki Shoemith	Executive Assistant
Ms. Barbara Jenschke	Dental Assistant Coordinator

d. Others Present:

Ms. Holly Johnston	Professional Recovery Network
Dr. Larry Spradley	Texas Dental Association
Mr. Jay Bond	Texas Dental Association
Ms. Alicia Grant	Texas Dental Hygienists Association
Mr. Jerry Valdez	Pavlik & Valdez Legal Consultants
Ms. Renee Cornett	Dental Hygiene Advisory Committee
Mr. Daryl Grant	Public Guest
Dr. Craig Hicks	Public Guest
Ms. Alison Pettiette	Public Guest
James Ford	Public Guest
Pat Patterson	Public Guest

A MOTION BY DR. TIPPIT, SECONDED BY MS. MCKIBBEN TO EXCUSE MS. ALLEN, MS. JUBA AND MS. STINE FROM THE MEETING. (FOR – 11 / OPPOSED – 0) MOTION CARRIES.

3. REVIEW AND APPROVAL OF PAST MINUTES.

Dr. Irons entertained a motion to approve the Minutes of the January 30, 2004 Meeting of the Texas State Board of Dental Examiners.

A MOTION BY DR. STUBBS, SECONDED BY MS. MCKIBBEN TO APPROVE THE MINUTES FROM THE JANUARY 30, 2004 MEETING. (FOR - 11 / OPPOSED - 0) MOTION CARRIES

4. APPEARANCES BEFORE THE BOARD.

a. Ms. Holly Johnson, LMSW, Representative for the Professional Recovery Network (PRN) - Progress Report on the Professional Recovery Network.

Ms. Johnston reported that 32 licensees are participating in the Professional Recovery Network Program during the 3rd Quarter of FY 04.

Licensees	1 st Quarter			2 nd Quarter			3 rd Quarter		
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Dentists									
Board Ordered	20	20	20	20	21	19	18	0	0
Volunteer	0	8	8	8	8	8	9	0	0
Total	20	28	28	28	29	27	27	0	0
Dental Hygienists									
Board Ordered	3	3	3	3	3	3	3	0	0
Volunteer	0	1	1	1	2	2	1	0	0
Total	3	4	4	4	5	5	4	0	0
Students & Assistants									
Dental Students	0	0	0	0	0	0	0	0	0
Hygienist Students	0	0	0	0	0	0	0	0	0
Dental Assistants	0	0	0	0	1	1	1	0	0
Total	0	0	0	0	1	1	1	0	0
Grand Total	23	32	32	32	34	33	32	0	0

Ms. Johnston also reported that four participants have not returned their monitoring agreements, are not currently being monitored and that the SBDE Enforcement Staff has been notified. As for the volunteers, Ms. Johnston stated that one participant has not returned the monitoring agreement and has been unwilling to return calls to the PRN Staff and that the SBDE Enforcement Staff has been notified.

Ms. Johnson noted that there was one relapse on 3/3/04 and one request for a modification to a Board Order (Reference Paragraph 4b, Appearance of Dr. Charles C. Wyatt). She further added that there are two inactive participants as well.

Ms. Johnson reported on the PRN Spring Meeting that was held on March 6, 2004 which allowed participants to meet with PRN Staff and other dental participants to discuss any questions or concerns they had. Ten dental participants and two significant others attended this event. Ms. Johnson further stated that a Spring Seminar for all PRN participants was held on March 7, 2004. Approximately 15 dental participants and one significant other attended this meeting. All dental professionals in attendance were trained to become interveners with other dental professionals who are impaired. All dental professionals present commented on the usefulness of the seminar to them personally and to their recovery.

Mr. Johnson reported on three areas of discussion to be held with SBDE Staff:

1) Legal Counsel. PRN Staff communicating with dental participant attorneys versus with dental participant. PRN is asking for SBDE support in PRN interacting with participants instead of the participant's attorney.

Mr. Houston stated there is nothing that can prevent an individual from being represented by an attorney, although the PRN is welcome to refer them to the Legal Division for further assistance.

Dr. McDonald asked what types of contact the PRN is receiving from the attorneys.

Ms. Johnston stated that attorneys are requesting to determine who conducts the mental health evaluations, they are wanting to negotiate the terms of the drug screenings and length of the monitoring agreement.

Mr. Houston clarified that the Board has the option in Settlement Conferences to make it clear that modifications are granted in certain types of cases.

Dr. Strunk stated that Mr. Hull informed us that his contract with his clients had been approved by the Board's General Counsel and if that contract has been approved, in most cases, except for the people who request modification, I think they should sign it or not sign it and abide by it.

2) Drug Screens by Investigators. SBDE Investigators have requested to perform drug screening on possibly impaired dentists during investigations. This drug screen would be through the investigator's work with a testing facility and not through the investigator's work with PRN. PRN is in favor of investigators obtaining this form of evidence since this allows the PRN to offer a more thorough intervention.

Dr. Irons called upon Mr. Houston to comment on this issue.

Mr. Houston stated that any type of participation, or agreement to submit any type of specimen, would be strictly voluntary; that the Board cannot force a respondent to do anything simply because there's a suspicion. He further stated that there must be solid evidence that some type of violation has occurred before it can be addressed by the Board.

Dr. Tippit asked if you have an anonymous or SBDE complaint and it is not a voluntary issue, do we have the authority by subpoena to induce the individual involved to provide a specimen.

Mr. Houston stated that he would not recommend that unless the respondent were under current Board Order which would give the Board more flexibility in terms of making sure they provide us with a means to ensure they are compliant with the Board Order. If they have no other disciplinary action and it is strictly based upon information that we need, the Board would have to consider if it would be appropriate to go forward with any type of temporary suspension or emergency action in the event that there were not another means to assist us in getting additional evidence that proves or disproves something that gives us great concern.

Dr. Tippit suggested that the Chair consider a restructuring of our peer assistance in terms of procedures and systems.

Dr. Irons noted this for discussion and action at a future Board Meeting.

3) Change in SBDE Peer Assistance Program Provider. Numerous participants have stated that they feel they are getting better service and support, in a more timely manner, from the PRN than the previous Peer Assistance Program provider.

b. Charles C. Wyatt, D.D.S. - Request for Modification to Board Order 02-146-1112 to Remove the Peer Assistance Requirement Under the Professional Recovery Network.

Ms. Johnston stated that Dr. Wyatt would not be attending the meeting to deliver his request; however the PRN reports that there is no longer a need for Dr. Wyatt to be monitored in the PRN Program and supports Dr. Wyatt's request for removal of the Peer Assistance Requirement.

Mr. Houston reported on the history regarding Dr. Wyatt's request for modification of his Board Order (02-146-1112). This Board Order was entered into on November 1, 2002. The Order related to, and findings of fact were, that the respondent was convicted of a misdemeanor offense of assault and bodily injury of a family member. The actual sanction issued was a 5-year suspended probation with six months of down time and requirement to participate in Peer Assistance for two years. He further stated that Dr. Wyatt is requesting to forego the remainder of his participation in the PRN and that all the other requirements to the Board Order will not be changed and that Dr. Wyatt is currently compliant.

Dr. Tippit asked for Mr. Houston's legal opinion on this issue. Mr. Houston responded that he required an input from the PRN Staff and that based on his understanding, Dr. Wyatt has completed all the terms required from law enforcement authorities. Mr. Houston further added that he would not venture to take a strong position on this, but would prefer to say that if the Peer Assistance program has fairly evaluated Dr. Wyatt and feel there's no further need, based upon what they are seeing, then he (Mr. Houston) would defer to the judgment of the PRN.

Mr. Garcia stated he does not want to see the Board create a precedent that all orders are freely subject to negotiation after their entered in to. In this case, since there is such a short period to go, he doesn't see a reason to modify this Order.

Dr. Irons asked Ms. Johnston to share what Dr. Wyatt has to left to complete through November. Ms. Johnston stated that Dr. Wyatt would have to complete quarterly reports and call in monthly, that drug screens and attendance at Alcoholics Anonymous are no longer required.

Dr. Tippit stated that based on the total lack of interference he perceives from the remaining eight months and the inappropriate precedence that this request be denied.

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY MR. WETHERBEE, TO DENY THE REQUEST OF DR. CHARLES WYATT FOR MODIFICATION OF BOARD ORDER 02-146-1112 TO REMOVE THE PEER ASSISTANCE REQUIREMENT UNDER THE PROFESSIONAL RECOVERY NETWORK. (11 – FOR / 0 – OPPOSED) MOTION CARRIES

c. William G. Patterson, D.D.S. – Request to Re-take the Western Regional Examining Board (WREB) Examination, if successful, and to be Re-licensed by the SBDE.

Mr. Houston reported that Dr. Patterson first appeared before the Board on June 20, 2003 to request a new dental license which had been previously revoked, and to request to take the WREB exam in order to meet the requirements. Dr. Patterson was unsuccessful in retesting and is here today to request the Board grant additional authority to re-take the WREB exam and corresponding requirement in the event he passed he would be re-licensed.

Dr. Irons called upon Dr. Patterson to provide comment on this matter. Dr. Patterson stated that although he went through the examination and found it to be a bad experience; it was worth the experience to learn what the test was all about.

Dr. Tippit asked Dr. Patterson what his WREB Board Score was. Dr. Patterson responded that he wasn't certain what it was, thinking maybe 38.

Dr. Tippit asked if Dr. Patterson thought the low score might have been attributed to no-show. Dr. Patterson reported that he had two no-shows on his Class 2's and some of his back-up patients were not available. He reported that the patient that did show was not a good tooth selection and that he just didn't diagnose like he should have. Feeling rattled, but not quitting the exam, he opted to stay and complete the exam in the hopes of learning more about the exam and its process.

Dr. Tippit asked if Dr. Patterson has completed any remediation, in terms of courses, since taking the exam. Dr. Patterson replied that he has taken no courses.

Dr. Tippit asked on what basis would you expect to pass this exam this time. Dr. Patterson stated that understanding that it's a good exam and a fair exam, he feels he knows what to expect the next time.

Dr. Irons asked Mr. Houston to cover the disciplinary actions issued to Dr. Patterson. Mr. Houston stated that Dr. Patterson has a disciplinary history with the Board. There are a total of six orders, the first one received in 1989 dealing with the issues of unprofessional conduct, prescribing a drug to a non-dental patient, there were also issues regarding fraud and misrepresentation. Two additional orders were issued against Dr. Patterson in 1992 relating to the addiction and use of drugs and/or alcohol in which he received a suspension. The final three orders were issued in 1999 which resulted in his revocation and also dealt with the same issues including issues with regard to additional patient fraud and misrepresentation. He further reported that the last order of revocation was appealed to the Supreme Court of Texas which denied his request and the matter became final in December of 2002. After this time, Dr. Patterson returned to the Board with another request to have his license returned to him.

Dr. Irons asked if Dr. Patterson had anything to say in reference to the license revocation. Dr. Patterson stated he will address any specific questions and that his attorney at the time of his last cases, never answered the admissions, "so no matter what I put before the Judge's that I went before, I could not legally defend myself, that this was stated in the Associate Judge's final findings that if the doctor cannot get his admissions answers in a timely fashion, then why should I see fit to give the doctor a chance." All the cases prior to 1989, he stated he that he did prescribe to a patient of non-record.

Mr. Garcia asked Mr. Houston if Dr. Patterson has appeared before the Board. Dr. Irons stated that Dr. Patterson has appeared before the Board before with the same request.

Mr. Wetherbee asked Dr. Patterson if he had any other problems that would impact his ability to practice dentistry. Dr. Patterson responded that he feels he has been clean and sober since 1999 and completed the Peer Assistance program.

Mr. Garcia asked Ms. Sanders if we have allowed people to take the WREB Exam more than once. Ms. Sanders responded that WREB offers make-up exams annually and that not all circumstances are similar to Dr. Patterson's in that they have come before the Board to ask for an opportunity to retake the exam. Ms. Sanders also stated that she does not recall an instance where an applicant has requested an opportunity to re-take the WREB exam, or take WREB exam initially, following revocation or a circumstance where the license is no longer available to them and not be successful and come back and ask again.

Mr. Garcia asked that if the Board were not to allow him to retake the WREB examination today, when would his opportunity to take the WREB Exam ever arise. Ms. Houston responded that it wouldn't, he would always be able to make an additional request to the Board; however, typically those types of requests, if you make another request immediately thereafter, the Board is inclined to deny it up to a year, before its inclined to take up the issue again.

Dr. Tippit stated that there are numerous examinations scheduled in the near future throughout the State.

Mr. Garcia asked Dr. Patterson if he's ready take the exam and feels confident in his ability to have a successful effort to pass the exam. Dr. Patterson responded that he feels confident he can pass the examination.

Dr. Malik shared her concern that Dr. Patterson has not taken steps to improve his skills.

Mr. Garcia asked if the Board has said that people coming out of dental school can take the exam and take a retake, if this is the case, what is the rationale for holding Dr. Patterson to a higher standard than the people who have just come out of dental school with all the training they should have. Dr. Malik responded that the difference is that Dr. Patterson has six Board Orders against him and has had it licensed revoked where the new graduate does not have this background.

Mr. Garcia asked if there are any rules that cover this. Mr. Houston responded that there are no formal requirements in terms of the number, and type of requests that a licensee can make, obviously they need to be reasonable, but there are no formal requirements that address the situation in particular with a the person who has a disciplinary history, who's had their license taken away and come back.

Mr. Wetherbee asked if we want to hold Dr. Patterson to a higher standard than a person just coming out of dental school and if we don't have a policy, would we want to make one. Ms. Sanders stated that there is a rule in place, the rule under which Dr. Patterson appears before the Board today. It states that if an individual is uncertain as to whether or not the Board will approve a license application, and that rule is built solely for these types of circumstances, they have the opportunity to come before the Board and ask before they invest the amount of money, time and effort and then have their application be declined.

Dr. McDonald asked Dr. Patterson what general continuing dental education programs have you taken in the last 12 months. Dr. Patterson replied that he has not taken any Continuing Education (CE). He further stated in defense of himself that the dental students are prepared on the WREB exam more than the general practitioner.

Dr. McDonald stated that the points made here today were on target, in as much as the Board has considered this and deliberated on it, it has complied with Dr. Patterson's request to take the WREB Exam. He also added that Dr. Patterson stated there was a physical problem at the examination, not a performance delivery problem, so the Board evaluated his request to take the WREB and agreed to that. Dr. Patterson did not pass the WREB exam. The Board counts on WREB to certify competence so we can then license people. Dr. McDonald stated that it is his concern that no CE or remedial training has been taken that would demonstrate Dr. Patterson is aggressively pursuing the maintenance of his skills, or keeping current with contemporary dental thinking.

Mr. Wetherbee stated that we have two issues before the Board, 1) the moral issue which we essentially ruled on last time by allowing him to take the test, and 2) a competency issue. If WREB's policy is to let someone take it three times, do we want to impose a higher standard here.

Mr. Garcia stated if Dr. Patterson is not competent to practice dentistry, WREB is going to rule that out, that he hopes that his request today is based upon his proper preparation and readiness to take the examination.

A MOTION WAS MADE BY DR. MASON, SECONDED BY MR. GARCIA TO APPROVE THE REQUEST OF DR. WILLIAM G. PATTERSON TO RE-TAKE THE WESTERN REGIONAL EXAMINING BOARD EXAMINATION AND, IF SUCCESSFUL, BE RE-LICENSED BY THE SBDE. (8 – FOR / 3 – OPPOSED) MOTION CARRIES

5. COMMITTEE REPORTS.

a. Enforcement Committee Report.

Dr. McDonald reported that the Enforcement Committee received reports from the Director of Enforcement and General Counsel which will be communicated later in this meeting.

Dr. McDonald also reported on the proposed amendments to Rules 107.101 and 107.102 that deal with the Enforcement Division's latitude in requesting a review by the Executive Committee on possible suspension notices. The interpretation of these rules are somewhat variable depending on how it is read and interpreted. Dr. McDonald reported that after much discussion, the Committee felt there was room for reconsideration and directed the Director of Enforcement and General Counsel to develop proposed language for presentation at the August Committee Meeting.

Dr. McDonald reported on Rule 108.6 which deals with reporting a patient death or injury requiring hospitalization. Dr. McDonald stated that the problem here is that this works a hardship against certain areas of dental specialists because typically these cases deal with pain management and the majority of these cases are emergency room visits and the patient is later discharged generally with a prescription for a more potent analgesic.

The problem here is when the self report is made it triggers a response by Enforcement to completely investigate and subpoena records from the hospital. There's a significant amount of time, toil and talent put into these cases and in the overwhelming amount of these cases are found to be of no consequence. So what was requested by Mr. Ablon was to review this rule, make a proposal on what constitutes a hospital admission. Hospital admission is a very difficult to define. Pursuant to this, Dr. McDonald stated he contacted local hospital groups, independent hospitals, privately owned hospital, Texas Hospital Association, American Hospital Association and then the federal government Medicare. The definitions vary. Basically a definition was proposed and found to be lengthy by a Committee Member and felt that it could be brought into sharper focus and therefore this rule was tabled pending Legal Counsel submission of proposed language at the next Committee Meeting.

b. Licensing Committee Report.

Dr. Malik reported the Licensing Committee discussed and considered two rules 114.11 and 104.1 which will be discussed further under the Rules Section of this meeting. She also stated the Committee discussed adding the Texas Workforce Commission as a CE provider but because they give any academic courses there was no action taken on this issue.

The Committee discussed the Item Writing Workshop facilitated by Prometric on the Infection Control Jurisprudence Exam. Dr. Malik expressed her appreciation to Dr. Strunk for representing her at this workshop as she was unable to attend due to serving as a WREB Examiner in Louisville, KY. Dr. Malik then called upon Dr. Strunk to report on the workshop.

Dr. Strunk reported that he came away with a really profound appreciation for the whole process. The question writing training session included four members each of TDA, TDHA, TDAA who reported that it was a very positive experience.

Dr. Irons asked Ms. Sanders if any feedback has been received from the participants. Ms. Sanders responded that the feedback received has all been positive, having spoken to all the stakeholder groups. Everyone felt very confident that the Board will have an outstanding product.

Dr. McDonald stated that the workshop was well orchestrated and well received by all participants. It was truly impressive to see these groups work together, there was a lot of coalition building.

Dr. Malik extended her appreciation to those members of TDA, TDHA, and TDAA for participating in the Item Writing Workshop.

Dr. Malik reported that Prometric will be opening new centers in Tyler, Houston, Lubbock and McAllen.

c. Dental Hygiene Advisory Committee Report.

Ms. Cornett reported that the Dental Hygiene Advisory Committee (DHAC) met on April 2, 2004. The DHAC discussed and unanimously supported to propose amendments to Rule 108.25. Rule 108.25 considers tuberculosis testing and will be addressed in this meeting within the Rules section.

The Committee spent the bulk of the meeting time developing the applicant criteria to be used for the selection of the dental hygienists DHAC will recommend to the Board as the new WREB examiner for the next fiscal year. The criteria that the prospective examiner will need to meet are similar to those that Board Members are required to meet. The individuals will need to:

- Be 18 Years of age or older;
- Be a United States Citizen;
- Be a resident of Texas;
- Be currently licensed and in good standing;
- Have been actively engaged in the practice of dental hygiene for at least the five years preceding the recommended appointment;
- Not been adjudged mentally incompetent;
- Not have been convicted by a felony;
- Not an adverse party in civil litigation against the Board;
- Does not present with a conflict of interest with the State Board.

The Staff is incorporating the criteria into an application form that will be accessed via the SBDE Website. Communiqués will be distributed to dental hygiene constituencies calling for interested persons to apply for the position. The DHAC anticipates presenting the FY 05 examiner recommendations to the Board at the August meeting.

d. Professional Evaluation Committee Report. Dr. Stubbs reported that the Professional Evaluation Committee, which included himself, Dr. Mason and Ms. Morgan met on March 11, 2004 regarding Case Number 04-424-0209 which dealt with the replacement of crowns. He stated that after a review of newly submitted evidence, and correspondence submitted by a Board Consultant who could not find fault with the respondent, this PEC felt there was no reason to change the decision of the previous Informal Settlement Conference (ISC) panel; therefore, the case was dismissed with no violation.

e. Medicaid Fraud Ad-Hoc Committee Report. Dr. McDonald reported that this Committee continues to stand ready to move when the Governor's office is prepared to initiate further action.

f. Database Liaison Report

Dr. McDonald commended Mr. Houston and Mr. Ablon for the work they have done with regard to this database. He further added that funding has been approved to work on the database and that Stream Studios, who have a great deal of experience working with the FilePro database program, has begun work in upgrading this database. Stream Studios is now working with Northrop Grumman to perform this upgrade.

A preliminary report, showing the findings of a survey conducted of our system identified the majority of software problems and one hardware problem, but it appears that we'll be able to formalize this within the week and begin work with a estimated completion date of the end of the fiscal year, August 31, 2004. At this time of this report it appears we are coming in under budget as well.

g. Regional Examination Liaison Report

Dr. Villarreal reported on the visit of he and Dr. Mason to the North East Regional Board (NERB) to observe an examination. He found that this exam is based on a totally different concept in criteria and grading and feels that both areas meet the requirements for passing minimum competency.

Dr. Villarreal stated that the NERB general assembly is basically a 4-day program that NERB conducts with all of their examiners where they go through a calibration process. Also there is a general assembly where issues are discussed that deal directly to NERB. One issue that caught his attention was the PG-1 program which the ADA recently supported and passed in New York and now people can circumvent the licensing process, passing the PG-1, they can get into a residency program and not have to take an exam, and be licensed in New York. This presents a concern because some graduates are not passing their exam are getting into residency programs so they can get their licenses.

Dr. Villarreal shared that the processes used by NERB Examiners are not as user-friendly and are more complex. A good point to their system is that you can specialize as an examiner in different areas of the exam. Another positive point to the NERB exam is that it's broken up into four modules and you have to pass each module with 75% or better.

Dr. Mason stated that one thing he came away was that the purpose of the regional exam is to deal with the incompetent dentist. He shared how impressed he was with the preparation and training he received an that it was very intense, thorough and comprehensive.

Dr. Irons asked Dr. Villarreal to comment on comparison in calibration between WREB and NERB. Dr. Villarreal responded that the calibration systems are different, that NERB is easier to calibrate. Another program worthy of note is the new progressive Curriculum Integrated Format being used at five dental schools. Students are participating in all four modules of the NERB exam throughout the year, then upon graduating they have their license. If students do not pass a particular module they can remediate while they're in school.

h. AADE Report.

Dr. Malik reported that the AADE met and discussed evidence-based dentistry, a systematic approach to looking at different outcomes, i.e., research, a person's medical history, the choices they have based on their experiences, etc. Dr. Malik stated that a comparison of all four of the regional testing agencies and the independent agencies was conducted and a paper on specialty certification, recertification, and federally mandated certification was provided to attendees. Dr. Malik summarized a paper prepared on Standard of Care and evidenced-based dentistry. Dr. Malik invited Board Members to see her if interested to view the papers presented at the AADE Meeting.

i. WREB Report.

Dr. Malik reported that WREB has not met; however she is pleased to announce that Ms. McKibben has been appointed to the Exam Review Sub-committee for WREB.

The Presiding Officer called for a recess at 9:24a.m. The Board resumed business at 9:34a.m.

6. RULES.

a. Discuss and Consider Adopting Amendments to Chapter 101 – Dental Licensure.

Mr. Hill reported the following on the Adoption of Amendments to Chapter 101:

- Rule 101.1(c)(5) contains new language specifying that an entity designated by the Board may administer the jurisprudence examination.
- Rule 101.2, concerning staggered dental registration, is repealed. The language of this section is contained in the new Rule 101.5.
- New Rule 101.2 is adopted to specifically address dental licensure by examination. Rule 101.2(d) has been added to that language to specify the regional examining boards designated as acceptable by the Board, and the effective dates of their acceptance.
- Rule 101.3, concerning temporary licensure by credentials, is repealed. The language of this section is contained in new Rule 101.4.
- New Rule 101.3 addresses dental licensure by credentials.
- New Rule 101.4 addresses temporary dental licensure by credentials.
- New Rule 101.5 addresses staggered dental registrations.
- Rule 101.7, concerning dental licensure by credentials, is repealed. The language of this section is contained in new Rule 101.3.
- Rule 101.8(e), which enumerates crimes that are considered to be of such a serious nature that they relate to fitness to practice dentistry, has been amended to update the terminology describing certain criminal offenses, and to add any felony subjecting a defendant to sex offender registration requirements.
- Rule 101.9, which concerns the collection of dental profile data, is repealed because the collection of that data is managed by the Texas On-Line Authority, and no longer rests with the Texas State Board of Dental Examiners.

A MOTION WAS MADE BY DR. VILLARREAL, AND SECONDED BY DR. TIPPIT TO ADOPT AMENDMENTS TO CHAPTER 101. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

b. Discuss and Consider Adopting Amendments to Chapter 103 – Dental Hygiene Licensure.

This Chapter was Tabled pending further review by the Dental Hygiene Advisory Committee.

c. Discuss and Consider Adopting Amendments to Rule 107.63 – Informal Disposition.

Mr. Hill reported that Amendments to Rule 107.63 provide for additional case resolution methods, including alternative dispute resolution methods, or by an informal settlement conference presided over by Board Staff.

A MOTION WAS MADE BY MR. GARCIA, AND SECONDED BY DR. STRUNK TO ADOPT AMENDMENTS TO RULE 107.63 (FOR – 11 / OPPOSED – 0) MOTION CARRIES

d. Discuss and Consider Proposing Amendments to Rule 107.202 – Disciplinary Guidelines and Administrative Penalty Schedule.

Mr. Hill reported that Amendments to this rule consist of the removal of the words “and address” from 107.202(d)(6)(B), as required by Senate Bill 1571.

A MOTION WAS MADE BY DR. STUBBS, AND SECONDED BY DR. TIPPIT TO ADOPT AMENDMENTS TO RULE 107.202 (FOR – 11 / OPPOSED – 0) MOTION CARRIES

e. Discuss and Consider Adopting Amendments to Rule 108.7 – Minimum Standard of Care, General.

Mr. Hill reported on the Amendments concerning the minimum standard of care in dentistry. The Amendment clarifies that blood pressure and heart rate measurements must be taken as part of the required initial medical examination of any patient, except that such measurements are not required for patients 12 years of age or younger, unless the patient’s medical condition or history indicate such a need.

A MOTION WAS MADE BY DR. MCDONALD, AND SECONDED BY DR. STRUNK TO ADOPT AMENDMENTS TO RULE 108.7 (FOR – 11 / OPPOSED – 0) MOTION CARRIES

f. Discuss and Consider Adopting Amendments to Rule 108.33 – Sedation/Anesthesia Permit.

Mr. Hill reported on amendments to Rule 108.33 concerning sedation and anesthesia permits. The Amendment adds Rule 108.33(c), which creates a process and requirements for a provisional permit that allows a licensed dentist with appropriate qualifications to administer parenteral conscious sedation and/or deep sedation and general anesthesia. Currently, permits require the approval of the Board, which only meets four times per year.

The adopted amendment also adds language to Rule 108.33(h)(1)(A)(i) that imposes a five-year limit on the amount of time certain training will be considered current for the purpose of acquiring a nitrous oxide/oxygen inhalation conscious sedation permit.

All other amendments are for grammatical or organizational purposes.

A MOTION WAS MADE BY DR. MCDONALD, AND SECONDED BY MR. WETHERBEE TO ADOPT AMENDMENTS TO RULE 108.33. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

g. Discuss and Consider Adopting Amendments to Rule 108.34 – Permit Requirements and Clinical Provisions.

Mr. Hill reported on amendments to Rule 108.34 concerning permit requirements and clinical provisions for the administration of sedation and anesthesia.

The amendments are made necessary by adopted amendments to Rule 108.33, and only change three citations to subsections of Rule 108.33.

One change was cited in Rule 108.34(c)(1)(A) as proposed referred to Rule 108.33(g)(3), where it should have cited Rule 108.33(h)(3). This change has been made in the version as adopted. No other changes have been made.

A MOTION WAS MADE BY DR. MCDONALD, AND SECONDED BY DR. STUBBS TO ADOPT AMENDMENTS TO RULE 108.34 (FOR – 11 / OPPOSED – 0) MOTION CARRIES

h. Discuss and Consider Adopting Amendments to Chapter 114 – Dental Assistants.

Mr. Hill reported on amendments to Chapter 114 all of which concern dental assistants. Changes to the proposed text consist of minor grammatical corrections and two non-substantive changes in language.

Mr. Hill stated that sections (listed below) contain extensive revisions to clarify and standardize language, as well as new language to enact the provisions to Senate Bill 263, requiring that dental assistants that make x-rays be registered to do so.

- Amendments to Rule 114.1 incorporate the definition of a “reversible” procedure, and specific examples of “irreversible” procedures that were previously contained in Rule 114.2.
- Rule 114.2, which contains definitions, is repealed, with those definitions reduced and redistributed to the proposed amendments in other sections.
- A new Rule 114.2 details the requirements and process for the registration of dental assistants who perform x-ray procedures. The word “examining” in the proposed text of Rule 114.2(b)(3)(A)(i) has been replaced with “exposing.” This corrects a typographical error and brings that portion of the language into congruence with the language elsewhere in the section. Also, Rule 114.2(c) has been changed from the text as proposed, pursuant to a comment received. The term “dental” has been changed to the more specific “dental assistant”, and the term “license” has been removed, to further clarify that the rule only applies to dental assistant registrations, and bring the language into congruence with the language elsewhere in the section.
- Amendments to Rule 114.3 incorporate some of the definitions previously found in Rule 114.2, and clarify and organize the remainder of its language.
- New Rule 114.10 relocates language from Rule 115.10, which details the currently-existing x-ray certification process for dental assistants. Language clarifying the dates for transition between the two registration schemes, pursuant to Senate Bill 263 has also been added, as Rule 114.10(a).

A MOTION WAS MADE BY DR. STUBBS, AND SECONDED BY DR. MALIK TO ADOPT AMENDMENTS TO CHAPTER 114 (FOR – 11 / OPPOSED – 0) MOTION CARRIES

i. Discuss and Consider Adopting Amendments to Chapter 116 – Dental Laboratories.

Mr. Hill reported on the amendments to Chapter 116 all of which concern dental laboratories. The only substantive changes are in response to the requirements of Senate Bill 1571. The adopted repeals and new sections improve the chapter's clarity, consistency, and organization.

- Rule 116.1, defining the term “dental student”, is repealed because that definition is now incorporated into new Rule 116.1.
- Rule 116.2, defining the term “dental technician”, is repealed because that definition is now incorporated into new Rule 116.1.
- Rule 116.3, concerning dental laboratory requirements, is repealed because the provisions of this section regarding operational requirements have been incorporated into new Rule 116.4 (“Requirements”), and provisions regarding registration, renewal, and reporting requirements have been incorporated into new Rule 116.3 (“Registration and Renewal”).
- Rule 116.4, concerning continuing education requirements, is repealed because the provisions of this section have been incorporated into new Rule 116.6 (“Continuing Education”).
- Rule 116.5, concerning the “grandfathering” exemption from the requirement that a dental laboratory employ one certified dental technician, is repealed because the provisions of this section have been incorporated into new Rule 116.5 (“Certified Dental Technician Required”).
- Rule 116.20, concerning definitions, is repealed because the provisions of this section have been incorporated into new Rule 116.1 (“Definitions”).
- Rule 116.21, defining the term “dental laboratory”, is repealed because the definition is now incorporated into new rule 116.1.
- Rule 116.22, defining the term “in-house dental laboratory” for purposes of exemption from the requirements of Chapter 116, is repealed because the definition is no longer required, as its terms are now incorporated into new Rule 116.2 (“Exemptions”).
- Rule 116.23, defining the term “commercial dental laboratory” for purposes of distinguishing some laboratories from those exempt from the requirements of Chapter 116, is repealed because the definition is no longer required, due to the revised language defining “dental laboratory” in new Rule 116.1, and the language of new Rule 116.2 (“Exemptions”).
- Rule 116.24, concerning application for registration of a dental laboratory, is repealed because the provisions of this section are now contained in new Rule 116.3 (“Registration and Renewal”).
- Rule 116.25, concerning parties responsible for the operation of a dental laboratory, is proposed for repeal. The provisions of this section are now contained in new Rule 116.20 (“Responsibility”).
- New Rule 116.1 defines certain terms used in Chapter 116.
- New Rule 116.2 defines exemptions from the requirements of Chapter 116. The language was taken from other sections in Chapter 116, with revisions for clarity and organization. Subsection (c) adds language required by S.B. 1571, exempting from the requirements of Chapter 116 certain manufacturers of materials or component parts used in fabricating dental appliances.
- New Rule 116.3 consolidates the dental laboratory registration and renewal requirements. The proposed language was taken from other sections in Chapter 116, with revisions for clarity and organization.
- New Rule 116.4 consolidates dental laboratory operational requirements. The language was taken from Rule 116.3, with revisions for clarity and organization.
- New Rule 116.5 addresses the requirement that a dental laboratory employ a certified dental technician. The language was taken from Rules 116.3 and 116.5, with revisions for clarity and organization.

- New Rule 116.6 addresses dental laboratory continuing education requirements. The language was taken from Rule 116.4, with revisions for clarity and organization. The word “nationally” in reference to “recognized board of certification” in subsections (a) and (d) have been removed, pursuant to the requirements of S.B. 1571.
- New Rule 116.20 concerns responsibility for the registration and operation of dental laboratories. The language was relocated verbatim from Rule 116.25.

A MOTION WAS MADE BY MR. WETHERBEE, AND SECONDED BY MR. GARCIA TO ADOPT AMENDMENTS TO CHAPTER 116. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

j. Discuss and Consider Adopting a Repeal of Rule 114.2 – Definitions.

Mr. Hill reported on the adoption action to repeal of Rule 114.2, stating Rule 114.2, which contains definitions, is repealed, with those definitions reduced and redistributed to the proposed amendments in other sections of Chapter 114.

The vote for the proposed repeal of this rule was covered under the motion to adopt amendments to Chapter 114.

k. Discuss and Consider Adopting a Repeal of Rule 115.10 – Radiological Procedures.

Mr. Hill reported on the adoption to repeal Rule 115.10 which concerns the registration of dental assistants performing radiological procedures. The repeal is necessary because the language in this section is being relocated to newly-adopted Rule 114.10. Although Chapter 115 pertains to dental hygienists, the provisions of Rule 115.10 were only relevant to dental assistants.

A MOTION WAS MADE BY MS. MCKIBBEN, AND SECONDED BY DR. VILLARREAL TO ADOPT A REPEAL OF RULE 115.10 (FOR – 11 / OPPOSED – 0) MOTION CARRIES

l. Discuss and Consider Proposing Amendments to Rule 108.25 – Dental Health Care Workers.

Mr. Hill reported on the proposal of amendments to Rule 108.25 which concern dental health care workers. The amendment adds subsection (e), which recommends that all dental health care workers receive a tuberculin skin test annually or on discovery of exposure, and encourages compliance with guidelines for tuberculosis testing and control recommended by the Centers For Disease Control and the Texas Department of Health.

A MOTION BY MR. WETHERBEE, AND SECONDED BY DR. TIPPIT TO PROPOSE AMENDMENTS TO RULE 108.25 AND PUBLISH IN THE TEXAS REGISTER FOR A 30-DAY COMMENT PERIOD. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

m. Discuss and Consider Proposing Amendments to Rule 104.1 – Requirements.

Mr. Hill reported on proposed amendments to Rule 104.1 concerning continuing education requirements for dentists and dental hygienists. The amendments are proposed to require that dentists and dental hygienists take an additional 3 hours of continuing education in the area of jurisprudence, to be completed every three years. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

A MOTION BY DR. MALIK, AND SECONDED BY MS. MCKIBBEN TO PROPOSE AMENDMENTS TO RULE 104.1 AND PUBLISH IN THE TEXAS REGISTER FOR A 30-DAY COMMENT PERIOD. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

n. Discuss and Consider Proposing New Rule 114.11 – Exemption.

Mr. Hill reported on the proposal of new Rule 114.11 concerning exemption from dental assistant registration. The new section is proposed to clarify the enactment of certain requirements imposed by Senate Bill 263, requiring that dental assistants that make x-rays be registered to do so.

Mr. Hill stated that the proposed language would exempt from the registration requirement, individuals who are only performing radiological procedures for training or educational purposes, under proper supervision. The exemption under the proposed section for an individual performing radiological procedures as part of on-the-job training is limited to 180 days in duration. This allowance is consistent with that allowed in the current dental assistant registration rules.

A MOTION BY DR. STRUNK, AND SECONDED BY DR. STUBBS TO PROPOSE NEW RULE 114.11 AND PUBLISH IN THE TEXAS REGISTER FOR A 30-DAY COMMENT PERIOD. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

7. DIVISION REPORTS.

a. Licensing Division.

Dr. McDonald reported that the Licensing Division received an application from a Dr. Thacker for a sedation permit from an individual who, by the strict interpretation of the SBDE rules, did not qualify. To clarify, Dr. McDonald stated that there are specific guidelines one has to meet in order to be given a permit at whatever level they request; however, Dr. Thacker had been a resident in an Oral Maxillofacial Surgery program out of state and had done well above the training that is required by our standards. This was documented in letters and telephone calls.

Dr. McDonald stated that initially the SBDE reviewed this request and did not accept the request. He further added that Dr. Thacker requested based on an exception to the rule and does fall under that exception.

Dr. McDonald affirmed that this applicant appears to be very competent and exceeds what the Board requires, and that there was nothing that we could discern that would prevent us from granting this permit. After a re-review of this request and considering it under the exception rule he moved that the Board approve this applicant's request for exception to Rule 108.33 and grant a permit.

A MOTION BY DR. MCDONALD, SECONDED BY DR. TIPPIT TO ACCEPT DR. THACKER UNDER THE EXCEPT FOR PERMIT. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

(1) Discuss and Consider Approval of Parenteral Anesthesia Permit Applications.

Dr. McDonald reported that 10 practitioners have submitted Parenteral Anesthesia Permit Applications. The qualifications and credentialing of these individuals have been ascertained and submit a motion that these permits be granted.

A MOTION BY DR. MCDONALD, SECONDED BY MS. MCKIBBEN TO APPROVE 10 PARENTERAL ANESTHESIA PERMIT APPLICATIONS. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

(2) Discuss and Consider Approval of Nitrous Oxide Permit Applications.

Dr. McDonald reported that 22 practitioners have submitted Nitrous Oxide Permit Applications. These applications have been reviewed by him and Staff and are hereby being submitted to the Board for approval.

A MOTION BY DR. MCDONALD, SECONDED BY DR. STRUNK TO APPROVE 22 NITROUS OXIDE PERMIT APPLICATIONS. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

(3) Discuss and Consider Approval of Enteral Conscious Sedation Permit Applications.

Dr. McDonald reported that 55 Enteral Conscious Sedation Permit applications. These applications have been reviewed by him and Staff and have been found to meet the criteria and credentialing necessary for permitting.

A MOTION BY DR. MCDONALD, SECONDED BY DR. STUBBS TO APPROVE 55 ENTERAL CONSCIOUS SEDATION PERMIT APPLICATIONS. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

(4) Licensing Division First Quarter Report.

Ms. Sanders reported on Second Quarter statistics from the Licensing Division.

Ms. Sanders reemphasized the success of the Item Writing Workshop and thanked everyone who supported that effort and participated.

b. ENFORCEMENT DIVISION REPORT.

(1) Enforcement Division Case Aging and First Quarter Reports.

Mr. Ablon reported on the 2nd Quarter of FY 2004 as well as the April Case Aging Report stating that at the end of April, the Enforcement Division will have no cases older than 160 days and anticipates the caseload to be under 101 days by the end of the Summer. He further added that the investigation of all FY 03 cases was completed at the end of March with the total number of on-going investigations remaining under 300.

Mr. Ablon noted that in March 2004, 116 complaints were received, 97 being jurisdictional. He also reported that there were 517 jurisdictional complaints filed this fiscal year with a total of 40 cases being dismissed in March.

Mr. Ablon presented Board Members with graphs that provide a visual interpretation of progress made.

Mr. Ablon presented reports on closed and dismissed cases for January, February, and March 2004.

(2) Approval of Task Force Consultants.

Mr. Ablon submitted the name of Dr. Robbie Henwood, General Dentist from San Antonio, Texas to serve as a member of the Enforcement Task Force. Dr. Henwood is being recommended by Dr. David Wilhite who currently serves as a Task Force Consultant.

Mr. Ablon stated there is a need for consultants in the specialties of pedodontics and orthodontics.

A MOTION BY DR. MCDONALD, SECONDED BY DR. STUBBS TO APPROVE THE APPOINTMENT OF DR. ROBBIE HENWOOD TO THE ENFORCEMENT TASK FORCE. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

Mr. Ablon reported that the Enforcement Division is monitoring compliance with the Professional Recovery Network.

Mr. Ablon reported that three investigators will be attending training at the Regional Counterdrug Training Academy at Naval Air Station Meridian, Mississippi.

Mr. Ablon stated that the SBDE filed two criminal cases in Harris county. The Subject who was operating an unregistered dental lab in their garage and providing dental services directly to patients. The person was not licensed to do either. The District Attorney accepted the case and was very complementary to our investigators.

c. ADMINISTRATIVE DIVISION REPORT.

(1) FY 2004 Budget.

Ms. McPherson reported that 42% of the fiscal year remains with 52% of the budget remaining. She noted that 60% of the Travel Budget remains unspent. Ms. McPherson stated that on the comparison of expenditures to revenue collected, that total expenditures through March 31, 2004 were \$923,000 and total revenue collected was \$1,428,322. This is an excess of revenue over expenditure of \$505,0064.

(2) LBB First Quarter Performance Report.

Ms. McPherson reported that we have 10 measures that have to be reported to the Legislative Budget Board (LBB). The report is as follows:

	<u>2004 Target</u>	<u>Year-to-Date Performance</u>
Measure on Complaints Resolved	603	422
Measure on Peer Assistance Program	64	34
Measure on Licenses Issued: Dentists	420	88
Measure on Licenses Renewed: Dentists	11,479	5,670
Measure on Licenses Issued: Dental Hygienists	461	96
Measure on Licenses Renewed: Dental Hygienists	8,334	4,184
Measure on Avg. Time for Complaint Resolution	275 days	393 days
Measure on Avg. License Cost/Individual: Dentist	\$4.65	\$4.74
Measure on Avg. License Cost/Facility	\$7.99	\$8.25
Measure on Avg. License Cost/Individual: Dental Hygienist	\$3.35	\$3.51

Ms. McPherson stated that an Explanation of Variance was provided to the LBB with every measure.

d. LEGAL DIVISION REPORT.

(1) Discuss and Consider Approval of Agreed Settlement Orders.

Mr. Houston read through the Agreed Settlement Orders that came as a result of State Office of Administrative Hearing (SOAH) action.

99-080-0816
 98-655-0827
 98-056-1001VF
 99-615-0830WT
 97-164-1008; 97-165-1007; 97-306-0204; 97-347-0214; 97-509-0325; 98-101-1016; 98-393-0420;
 98-611-0804; 99-206-0115; 99-514-0707; 00-238-0124; 01-673-0718; 02-578-0426

A MOTION BY MR. WETHERBEE, SECONDED BY DR. MCDONALD TO APPROVE THE AGREED SETTLEMENT ORDERS FROM SOAH READ BY MR. HOUSTON, TSBDE GENERAL COUNSEL. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

(2) SOAH Settlement Orders and Proposals for Decision.

(a) Appearing before the Board is Craig S. Hicks, DDS, Respondent, SBDE No. 01-484-0410, SOAH No. 504-04-2725.

Mr. Houston reported this was a default case as it was sent to SOAH and the Administrative Law Judge (ALJ) granted that default judgment upon motion by Staff. We received a request from Dr. Hicks to appear in order to address some of the concerns that were set out and to present his issues before the Board. Staff will provide its recommendations to the Board following Dr. Hicks' address.

Mr. Houston read the issues involved in this case stating that Board Staff initiated formal disciplinary action against the Respondent at the State Office of Administrative Hearings (SOAH) regarding orthodontic treatment of a minor child. The respondent, although properly noticed, did not appear at the hearing and a default judgment was granted pursuant to Staff's motion. The Findings of Fact were that the Respondent failed to timely and appropriately diagnose orthognathic surgery, failed to timely and appropriately plan orthodontic dental treatment, failed to provide viable and effective orthodontic treatment, failed to obtain informed consent from the parents of the minor patient and failed to advise the parents of available treatment options. The ALJ's recommended sanction is revocation.

Dr. Irons called upon Dr. Hicks to address this matter before the Board. Dr. Hicks gave a detailed history of the case.

Dr. Irons asked Dr. Hicks to comment on the failure to appear. Dr. Hicks stated that in June 2000, he lived in the home of his brother, who had died in the home, which resulted in Dr. Hicks having to move out and not receive the notice. He added that it was when another brother moved into the home that he finally received a notice and called the Board. Dr. Hicks shared that he had submitted two changes of address with the Post Office yet the notices were still being sent to the old address.

Dr. Irons asked Dr. Hicks if it is his testimony that the changes of address submitted were provided to the Post Office and not the Board. Dr. Hicks responded that Dr. Irons is correct, that he wasn't aware he had to submit a change of address with the Board.

Mr. Houston stated that there is an annual registration form that is sent out that asks every licensee to indicate what their mailing address is going to be and they are required and bound by the rules to keep that information up-to-date. When the Board sends out its formal notice of hearings, it has to go to the address that is designated by the licensee.

Dr. Hicks responded that he understands, and has no problem with Mr. Houston's position regarding the mailing, but feels the issue here is the treatment of this patient.

Mr. Garcia asked Dr. Hicks when he tried to update his address with the Post Office. Dr. Hicks responded that he submitted two changes of address with the Post Office in October 2000 and December of 2003.

Mr. Garcia asked if Dr. Hicks has engaged the assistance of an attorney. Dr. Hicks responded that he has not secured an attorney.

Dr. Tippit asked Dr. Hicks to comment on his education and if he has had any legal actions taken against him. Dr. Hicks provided a brief summary of his education and stated he has no disciplinary actions against him. Mr. Houston confirmed that Dr. Hicks has disciplinary action against him.

Dr. Malik asked Dr. Hicks if he has ever reported a change of address with the Board this year. Dr. Hicks responded that he notified Mr. Houston of his change of address during a phone call to discuss this matter.

Dr. Irons asked Dr. Hicks if he was receiving license renewals and if he has been filling out the change of address area of the application. Dr. Hicks said he received the renewals but did not complete the change of address section because he still owned the house where the mailings were being sent and assumed the mailings addressed to him would be forwarded by the Post Office.

Dr. Irons asked Mr. Houston if the Board received any response to the notices sent to Dr. Hicks. Mr. Houston responded that Dr. Hicks did file a response.

Dr. Hicks stated he did receive one notice that was mailed to his office.

Dr. Malik asked Dr. Hicks if he has been receiving the renewal application annually and renewing annually. Dr. Hicks responded that he has been receiving the application and renewing it annually.

Mr. Wetherbee asked Mr. Houston if he has recommendations regarding the sanctions. Mr. Houston stated that Staff's recommendation of sanctions include a reprimand or a probated suspension, a \$3,000-\$5,000 fine, Continuing Education in Risk Management and Diagnosis and Treatment Planning and orthodontic procedures. In addition to that, we would recommend that Dr. Hicks take the Jurisprudence Exam. Mr. Houston also stated that the Board can Table this matter for additional consideration if it wishes to send it to a Settlement Conference Panel in order to allow Dr. Hicks to appear.

Mr. Garcia asked Mr. Houston why the Board is asking for a revocation from the ALJ when the case is not a revocation case. Mr. Houston responded that when Staff go before the ALJ the highest sanction is requested, this then gives the Board the maximum latitude to decide what the final sanction is going to be.

Mr. Garcia asked if there is time for Dr. Hicks to Request for Motion for New Trial with the ALJ. Mr. Houston stated that the procedure after the ALJ reaches his Proposal for Decision, the Respondent can request in a response to the PFD, or the exception for PFD, a chance to have it re-heard. The problem with that, is that it must be done within 20 days. Mr. Houston stated that there have been no responses filed with the PFD.

Mr. Garcia told Dr. Hicks that he has created a real problem for the Board at this meeting and hopes that he has learned something from this and will file a changes of address in the future.

Dr. Tippit told Dr. Hicks that this case obviously doesn't rise to the level of revocation but there's been a terrific waste of resources, in effort, state money, tax money and our employees time due to his negligence. Dr. Tippit proposes, with the Chair's approval, two motions, 1) Overturn the ALJ's decision in terms of the revocation order, and 2) Accept the itemized sanctions that Mr. Houston mentioned earlier in this meeting with a fine of \$5,000.

Mr. Houston stated that if Dr. Hicks does not accept the sanctions mentioned earlier in this meeting, that going back to SOAH is not an option, that this case would now be seen in District Court. He further added that Dr. Hicks can appeal the decision of the Board to District Court if he wishes or the Board can decide to Table this matter and conduct its own Settlement Conference at which time whatever evidence Dr. Hicks wants to offer, solely for the purpose of determining as sanction, can be done.

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY DR. STUBBS TO VARY FROM THE RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE THAT DR. HICKS' LICENSE NOT BE REVOKED. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY DR. MASON TO ISSUE A REPRIMAND, \$5,000 FINE, 15 HOURS OF CONTINUING EDUCATION IN RISK MANAGEMENT DIAGNOSIS AND TREATMENT PLANNING AND ORTHODONTIC PROCEDURES, TAKE THE JURISPRUDENCE EXAMINATION WITHIN 6 MONTHS OF THE BOARD'S ORDER. DR. TIPPIT WITHDREW HIS MOTION

A MOTION WAS MADE BY MR. GARCIA, SECONDED BY MR. WETHERBEE TO TABLE THIS MATTER TO ALLOW THE SBDE GENERAL COUNSEL AND DR. HICKS TO DISUSS THE PUNITIVE PHASE OF THIS CASE. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

Mr. Houston reported that after much discussion with Dr. Hicks it was decided that this matter would be referred to a Settlement Conference.

A MOTION MADE BY DR. MASON, SECONDED BY MR. WETHERBEE TO SEND THIS MATTER TO A SBDE SETTLEMENT CONFERENCE. (FOR – 11 / OPPOSED – 0) MOTION CARRIES (FOR – 9 / OPPOSED - 2) MOTION CARRIES

(b) Proposals for Decision.

Mr. Houston read through the submitted the following Proposal for Decision: 99-147-1123; 00-477-0516; 01-008-0926; 01-139-1106; 02-132-1106; 02-844-0813.

A MOTION BY DR. TIPPIT, SECONDED BY MR. WETHERBEE TO APPROVE THE PROPOSAL FOR DECISION ON 99-147-1123; 00-477-0516; 01-008-0926; 01-139-1106; 02-132-1106; 02-844-0813. (FOR – 11 / OPPOSED - 0) MOTION CARRIES

Mr. Houston read through the submitted the following Proposal for Decision: 99-195-0107LB; SOAH No. 504-04-2740.

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY DR. MASON TO APPROVE THE PROPOSAL FOR DECISION ON 99-195-0107LB; SOAH No. 504-04-2740. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

Mr. Houston read through the submitted the following Proposal for Decision: 01-772-0829; SOAH No. 504-04-2726.

A MOTION WAS MADE BY DR. STUBBS, SECONDED BY MS. MCKIBBEN TO APPROVE THE PROPOSAL FOR DECISION ON 01-772-0829; SOAH No. 504-04-2726. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

Mr. Houston read through the submitted the following Proposal for Decision: 02-363-0207; SOAH No. 504-04-2727.

A MOTION WAS MADE BY DR. MCDONALD, SECONDED BY MR. GARCIA TO APPROVE THE PROPOSAL FOR DECISION ON 02-363-0207; SOAH No. 504-04-2727. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

Mr. Houston read through the submitted the following Proposal for Decision: 99-076-1016; 99-318-0329; 00-124-1112; 00-377-0410; 02-430-0304; SOAH No. 504-04-2728.

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY DR. STUBBS, TO APPROVE THE PROPOSAL FOR DECISION ON 99-076-1016; 99-318-0329; 00-124-1112; 00-377-0410; 02-430-0304; SOAH No. 504-04-2728. (FOR – 11 / OPPOSED – 0) MOTION CARRIES

(b) Appearing before the Board, at the pleasure of the Presiding Officer, is Janis Joy Frnka, DDS, License No. 15968, and her attorney, Ms. Alison Y. Pettiette. (Reference Case Nos: 98-100-1017SC, 99-173-1216JF; 02-631-0515DI, 03-267-1213; SOAH No. 504-04-2729)

Mr. Nieto, SBDE Staff Attorney provided Board Members copies of letters submitted by Ms. Pettiette in support of Dr. Frnka's request for continuance.

Ms. Pettiette stated that Dr. Frnka is appearing before the Board today to request a Motion for Continuance based upon Rule 107.49, failing to give Dr. Frnka opportunity to file exceptions, briefs, and replies to the proposed ALJ's Findings of Fact and Conclusions of Law prior to setting this final hearing.

Mr. Nieto stated that the underlying facts that support the PFD relate specifically to a failure to receive notice - that this is not correct. He further added that Dr. Frnka has apparently received four active investigations over the last six years. In the first of those complaints, opened in 1998, an Informal Settlement Conference was held. Upon review of this file, there was no indication that Dr. Frnka appeared. The specific allegations in that matter were that Dr. Frnka failed to document a treatment plan without options and failed to discuss treatment options with patient. Additionally the Respondent failed to design and construct crowns that would accept a removal partial and denture. These were Standard of Care violations.

Another case was opened in 1999. In this instance, the Respondent failed to make records available for inspection to the Board.

Another case opened in 2002. That complaint contained allegations of improper delegation and a violation to make records available to the Board.

Finally, in 2003 a case was opened on Dr. Frnka which involved approximately 13 patients. Included in those allegations, failure to maintain records, failure to make any entries in records, additionally there

are allegations that the respondent practiced during the period of October 22, 2002 and November 14, 2002 while her dental license was expired.

Mr. Garcia asked Mr. Nieto if Dr. Frnka received notice. Mr. Nieto responded that Dr. Frnka did not get the notice and that copies of all the notices that were issued notifying the respondent that the cases were opened, were published in the file.

Dr. Irons asked Mr. Houston to cover what the Board's options are. Mr. Houston responded that the ALJ's Findings of Fact are now final, they can be overturned by the Board; however, that will require Tabling in order for Staff to prepare a justification for the Board's decision to overturn that Order. The other options available would be to Table for additional discussion, whether they be with me, or at an ISC.

Mr. Houston read the drafted sanction, a five-year probated suspension, 30 days downtime, \$18,000 fine, 23 hours of CE including Risk management Diagnosis and Treatment Planning, and 10 hours of CE in Fixed and Removable Prosthodontics. In addition to that, we would request that Dr. Frnka take the Jurisprudence Exam every year for the five years of her suspension.

Dr. Tippit stated the issues that need to be resolved require a detailed look and suggested this case go to ISC.

A MOTION BY DR. TIPPIT, SECONDED BY DR. STUBBS TO TABLE FURTHER ACTION ON THE PROPOSAL FOR DECISION REGARDING JANICE JOY FRNKA , DDS, LICENSE NO. 15968, PENDING CASE REVIEW AT A STAFF SETTLEMENT CONFERENCE TO BE SCHEDULED IN THE FUTURE BY THE SBDE LEGAL DIVISION.

The Presiding Officer called for a recess at 11:40a.m. The Board resumed business at 1:00p.m. A roll call was conducted and it was noted for the record that a quorum was present.

(3) Proposed Board Orders.

Mr. Houston read through the submitted the Proposed Board Orders as follows:

02-896-0830	02-487-0318	03-249-1206
02-734-0701DI	02-882-0829FG	02-222-1211RY
99-404-0510; 02-596-0503BA	03-428-0210	03-409-0128
03-403-0127	03-003-0906	03-531-0307
03-929-0729	02-528-0410; 03-822-0623	03-594-0407
03-563-0324	03-472-0328	01-659-0710
03-415-0129	03-827-0623	02-382-0213
04-059-0926	03-871-0709	02-574-0425
03-262-1212	03-600-0407	

A MOTION BY MR. GARCIA, SECONDED BY MR. WETHERBEE TO APPROVE PROPOSED BOARD ORDERS AS READ BY MR. HOUSTON, TSBDE GENERAL COUNSEL. (FOR – 11 / OPPOSED - 0) MOTION CARRIES

Mr. Houston further added that 33 Proposed Board Orders were dispatched since the last Board Meeting with 27 cases being resolved since that meeting. Actions subsequent to the last Board meeting include case closures totaling 29, 7 Proposals for Decision being issued, 23 cases being filed at SOAH and 65 total cases filed under prosecution at SOAH (28 cases under Board consideration at the April 16, 2004 Board Meeting with 37 cases remaining.)

Mr. Houston stated that 91 Board Order cases are projected to be resolved by action of the Board on April 16, 2004. He also projected that the Legal Division will have resolved 171 Board Order cases in FY 04. He also added that that in comparison to Fiscal Years 2002 and 2003, 98 cases and 106 cases were resolved, respectively. The estimated total of cases being handled in the Legal Division at this time is 612.

Mr. Houston concluded his report stating that Informal Settlement Conferences are currently scheduled for June 10-11, 2004 and July 8-9, 2004 and that a Staff Settlement Conference will be held in the near future.

(7) Report of Liaison to Legal Division for SOAH Resolution.

Mr. Garcia reported that 26 cases filed at SOAH is just 10 shy of the total cases that were filed at SOAH in 2003, this is a dramatic increase and further added that we're headed in the right direction.

14. EXECUTIVE DIRECTOR'S REPORT.

Mr. Schmidt reported on the Agency's progress and achievements and other on-going efforts since the January meeting.

Official notice of Dr. Irons' appointment by Governor Perry came in early March 2004 and that the he and the Directors have been working with Dr. Irons to make the transition as efficient and effective as possible.

Focus was placed on the filing of rules with the Texas Register during February and March of 2004. The January meeting resulted in the proposal of new, amended and repealed rules in 11 sections of the rules. The majority of these changes were to allow for more efficient approach to the way this Agency conducts business. Other changes were made as a result of statutory language from the 78th Legislative Session.

A Public Hearing was held on March 5, 2004 to accept public comment on the proposed rules on Chapter 114 – Dental Assistants. Approximately 130 were in attendance with 50 providing testimony. The majority of comments dealt with the development of new examinations for dental assistants in the areas of infection control and jurisprudence. Other comments dealt with examination center access in remote areas of the State and the cost of the examinations.

An Agency risk assessment tool was completed and submitted to the State Auditor's Office. This risk assessment is in response to the Government Code, Section 2102.013(c) - HB 2485, 78th Legislative Session. The assessment process includes three parts: 1) Identifying Agency activities; 2) Identifying and rating risks for each activity; and 3) Identifying actions taken to mitigate risks.

An Test Item Workshop was held on April 2-3, 2004. The SBDE hosted this 1½ day session. Drs. Irons, Strunk and McDonald observed on behalf of the Board. Mr. Schmidt stated that he and Ms. Sanders observed from the staff's perspective. A team from Prometric facilitated this event and worked closely with stakeholders from the Texas Dental Association, the Texas Dental Hygienists Association and the Texas Dental Assistant Association. All participants and observers shared a positive sense of accomplishment.

A Customer Service Satisfaction Survey will be mailed to licensees, stakeholders and complainants on April 19, 2004. The purpose of the survey is to gain feedback regarding the services this Agency provides to its customers.

The Agency is updating the Strategic Plan to reflect Goals and Objectives for Fiscal Years 2005-2009.

The Database Study is in its initial phase. Target date for completion is May 2004.

The Parity Study Position Paper is in the final stages of completion. This document will characterize the Agency's mission, summarize its accomplishments and compare compensation with other agencies that are involved with licensing and enforcement-type activities.

The Legislative Appropriate Request will be developed in July and August based on Board input.

Preparations have begun for the Legislative Session which begins January 2005. One issue of concern involves the future of this Agency and its ability to establish goals and objectives in the Strategic Plan that can be both attained and measured. Another concern involves this Agency's primary mission of protecting the public, maintaining and supporting staff that possess the necessary experience and expertise to handle complex issues in the dental field. Funding and parity need to be approved to allow for the recruitment and retention of qualified and knowledgeable personnel.

15. PRESIDING OFFICER'S REPORT.

Dr. Irons reported that he has allocated Monday mornings to visit with Board Staff. He further added that he is very impressed with what he sees going on at the Board. There is a real group effort and support of my needs.

16. PUBLIC COMMENTS.

Ms. Alicia Grant provided positive comments regarding the Item Writing Workshop on behalf of the Texas Dental Hygienists Association.

Dr. Spradley shared his appreciation with the Board as he steps down as TDA's representative as SBDE Liaison.

17. ANNOUNCEMENTS.

Dr. Tippit announced that Dr. Allen T. Smith passed away on February 2, 2004. Dr. Tippit requested a letter be sent on behalf of the Board to Dr. Smith's wife highlighting his exemplary service as a dentist in the State of Texas.

Dr. Stubbs gave brief details on the actions of Mr. Boyd Shepherd, who served as legal counsel to respondents at the March Informal Settlement Conferences. Dr. Stubbs is asking for a restriction of Mr. Shepherd's participation at future conferences. After a short discussion it was decided that Mr. Shepherd not be allowed to represent any individual at Settlement Conferences between now and January 2005. Mr. Houston responded stated that nothing official action needs to be taken on behalf of the Board; however, he will notifying Mr. Shepherd know that he will be restricted from representing individuals at Informal Settlement Conferences between April 15, 2004 and December 31, 2004.

Dr. Irons announced the dates of upcoming Informal Settlement Conferences as June 10-11, 2004 and July 8-9, 2004.

Dr. Irons presented Dr. Tippit with a plaque on behalf of the Board recognizing his service as Presiding Officer of the Board.

18. ADJOURN. A MOTION BY MS. MORGAN, SECONDED BY MS. MCKIBBEN TO ADJOURN THE MEETING AT 2:00 P.M. (FOR – 11 / OPPOSED – 0) MOTION CARRIES.

- S I G N E D -

DR. J. KEVIN IRONS
Presiding Officer
Texas State Board of Dental Examiners

Date: August 27, 2004

- S I G N E D -

DR. GARY W. MCDONALD
Secretary
Texas State Board of Dental Examiners

Date: August 27, 2004