



TEXAS STATE BOARD OF DENTAL EXAMINERS

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BOARD MEETING MINUTES November 16, 2007

1. **CALL TO ORDER:** Dr. McDonald called the meeting of the Texas State Board of Dental Examiners to order. The time was 8:04 a.m.
2. **ROLL CALL:** Dr. Strunk called the roll. It was noted for the record that a quorum was present.

a. Members Present:

Dr. Gary W. McDonald	Presiding Officer
Dr. George Strunk	Secretary
Ms. Tammy Allen, RDH	Member
Dr. Tamela Gough	Member
Dr. Norman Mason	Member
Ms. Helen McKibben, RDH	Member
Ms. Georgiana Matz	Public Member
Dr. William Purifoy	Member
Dr. Russell Schlattman	Member
Ms. Phyllis Stine	Public Member
Dr. Paul E. Stubbs	Member
Dr. Juan D. Villarreal	Member
Mr. Charles Wetherbee	Public Member

b. Members Absent:

Mr. Oscar Garcia	Public Member (Excused)
Ms. Ann Pauli	Public Member (Excused)

c. TSBDE Staff Present:

Ms. Sherri Sanders Meek	Executive Director
Mr. Fread Houston	General Counsel
Ms. Lisa Jones	Director of Enforcement
Ms. Brenda Kilburn	Director of Administration
Ms. Sandy Ferris	Director of Licensing
Ms. Peggy DeAnda	Attorney
Ms. Anne Dvorak	Attorney
Ms. Barbara Jordan	Attorney
Mr. Rodney Montes	Attorney
Ms. Vicki Shoemith	Executive Assistant

A MOTION WAS MADE BY DR. PURIFOY AND SECONDED BY DR. MASON TO EXCUSE MR. GARCIA AND MS. PAULI FROM THE MEETING. (FOR – 11/ OPPOSED – 0) MOTION CARRIES.

3. REVIEW AND APPROVAL OF MINUTES FROM THE AUGUST 17, 2007 BOARD MEETING.

Dr. Purifoy requested the word “Reception” on Page 5, Paragraph 1, to now read “Receptionist.”

A MOTION WAS MADE BY DR. STUBBS AND SECONDED BY MS. MCKIBBEN TO APPROVE THE MINUTES AS AMENDED. (FOR – 11 / OPPOSED – 0) MOTION CARRIES.

4. APPEARANCES.

a. Dr. Diana Diaz – Application for Reinstatement of her Retired Dental License.

A MOTION WAS MADE BY DR. VILLARREAL AND SECONDED BY DR. STRUNK TO APPROVE THE APPLICATION FOR LICENSURE REINSTATEMENT OF DR. DIANA DIAZ. FOR – 11 / OPPOSED 0) MOTION CARRIES.

b. Dr. Jo Bren Piranio – Request for Licensure.

A MOTION WAS MADE BY DR. PURIFOY AND SECONDED BY MS. MATZ TO TABLE THE DISCUSSION TO THE JANUARY 2008 MEETING. (FOR – 10 / OPPOSED – 1) MOTION CARRIES.

For the Record: Ms. Allen arrived at 9:07 a.m.

4. COMMITTEE REPORTS.

- a. Licensing Committee Report.** Ms. Stine reported that the committee approved one request for alternative continuing education and approved the recommendation of proposed amendments to Rule 104.1 to the Board.
- b. Enforcement Committee Report.** Dr. Strunk reported that the committee received reports from the Director of Enforcement and General Counsel and voted to recommend to the Board proposal of amendments to Rules 107.63 and 107.103. He also reported on the committee’s vote to recommend final adoption on Rules 100.3, 104.1, 108.60, 108.72, 115.1 and 115.4. Dr. Strunk reported that Rule 108.7 was Tabled.

6. OTHER REPORTS.

- a. Professional Recovery Network Report.** Mr. Kim Roberson with the Texas Pharmacy Association presented the PRN Report.
- b. WREB/AADE Report.** Dr. Stubbs reported on the September 26-27, 2007 meeting of the American Association of Dental Examiners Report. He stated that WREB will hold its next meeting on January 5, 2008.

The Presiding Officer called for a recess at 9:55 a.m. The meeting reconvened at 10:20 a.m. It was noted for the record that a quorum was present.

7. ITEMS FOR GENERAL DISCUSSION.

- Teeth Whitening Systems Outside the Dental Office.

Mr. Houston reported that the Board has received a number of inquiries from other state agencies and concerned individuals on the use of teeth whitening outside the dental office. Without a specific fact pattern, staff has looked at teeth whitening kiosks and different types of booths, salons, sporting goods stores and situations where these types of services are being provided.

These products can run the gambit from anything like the Crest-type teeth whitening strips to what appears to be a dental chair set-up in a salon where an attendant, or someone who claims to have received training, provides the materials to the customer they may need in order to do the whitening. One version includes the use of a light situated beside the chair. A tray handed to the customer containing gel is placed in the mouth, by the customer, and a light is used to shine, or activate, the bleaching gel inside the mouth.

Mr. Houston stated that a lot of this is operating in a very gray area because the operator knows they can't practice dentistry and that the operator wants to make sure the parts of those procedures being done, are being done by the customer – placing their own tray in their own mouth as opposed to having an attendant do it, or an attendant put on an actual bleaching agent which is what may typically happen in a dental office.

Mr. Houston referred to the Dental Practice Act, Chapter 264, which states in the event there is a violation, or an attempt to practice dentistry in violation of law, that the State can take certain actions in order to enforce that; however, it makes clear that the State is going to be represented by the Attorney General (AG), county attorneys and district attorneys. For the SBDE it becomes a matter of support in helping the local authorities and the AG in terms of any information they might need.

In closing, Mr. Houston stated that the SBDE acknowledges the importance of this matter and seeks to inform interested individuals of the law pertaining to the jurisdiction of the SBDE within Chapter 264 of the Dental Practice Act and will continue to provide support to the AG and/or civil or criminal courts.

8. RULES.

a. Discuss and Consider proposed amendments to Rule 103.7 – Retired License Status.

A MOTION WAS MADE BY DR. PURIFOY AND SECONDED BY MR. WETHERBEE TO APPROVE PROPOSED AMENDMENTS TO RULE 103.7 AS PRESENTED AND PUBLISH IN THE TEXAS REGISTER. (FOR - 12 / OPPOSED – 0) MOTION CARRIES

b. Discuss and Consider proposed amendments to Rule 104.1 – Requirement.

A MOTION WAS MADE BY DR. PURIFOY AND SECONDED BY DR. STUBBS TO APPROVE PROPOSED AMENDMENTS AS PRESENTED AND PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 1) MOTION CARRIES.

c. Discuss and Consider proposed amendments to Rule 107.63 – Informal Disposition and Alternative Dispute Resolution.

A MOTION WAS MADE BY DR. STUBBS AND SECONDED BY MS. MATZ TO APPROVE PROPOSED AMENDMENTS TO RULE 107.63 AS PRESENTED AND PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

d. Discuss and Consider proposed amendments to Rule 107.103 – Dismissal of Complaints

A MOTION WAS MADE BY MS. MCKIBBEN AND SECONDED BY DR. PURIFOY TO APPROVE PROPOSED AMENDMENTS TO RULE 107.103 AS PRESENTED AND PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

e. Discuss and Consider proposed amendments to Rule 108.7 – Organization and Structure.

Mr. Houston reported that Rule 108.7 was tabled in the Enforcement Committee.

f. Discuss and Consider final adoption of amendments to Rule 100.3 – Organization and Structure.

A MOTION WAS MADE BY MR. WETHERBEE AND SECONDED BY DR. VILLARREAL TO APPROVE THE FINAL ADOPTION OF AMENDMENTS TO RULE 100.3 AND PUBLISH IN THE TEXAS REGISTER. (FOR – 11 / OPPOSED - 1) MOTION CARRIES.

g. Discuss and Consider final adoption of amendments to Rule 104.1 – Requirement.

A MOTION WAS MADE BY DR. STUBBS AND SECONDED BY MS. MCKIBBEN TO APPROVE THE FINAL ADOPTION OF AMENDMENTS TO RULE 104.1 AND PUBLISH IN THE TEXAS REGISTER. (FOR – 11 / OPPOSED – 1) MOTION CARRIES.

h. Discuss and Consider final adoption of amendments to Rule 115.1 – Definitions.

A MOTION WAS MADE BY MS. MCKIBBEN AND SECONDED BY MR. WETHERBEE TO APPROVE THE FINAL ADOPTION OF AMENDMENTS TO RULE 115.1 AND PUBLISH IN THE TEXAS REGISTER. (FOR – 11 / OPPOSED – 1) MOTION CARRIES.

i. Discuss and Consider final adoption of amendments to Rule 115.4 – Placement of Site Specific Subgingival Medicaments.

A MOTION WAS MADE BY MS. MCKIBBEN AND SECONDED BY DR. STUBBS TO APPROVE THE FINAL ADOPTION OF AMENDMENTS TO INCLUDE A CHANGE IN SUBPARAGRAPH 1 AND PUBLISH IN THE TEXAS REGISTER. (FOR – 8 / OPPOSED – 4) MOTION CARRIES.

j. Discuss and Consider final adoption of amendments to Rule 108.60 – False, Misleading or Deceptive Referral Schemes.

A MOTION WAS MADE BY DR. PURIFOY AND SECONDED BY MS. ALLEN TO APPROVE THE FINAL ADOPTION OF AMENDMENTS TO RULE 108.60 AS PRESENTED AND PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0). MOTION CARRIES.

k. Discuss and Consider final adoption of amendments to Rule 108.72 – Dental Custodian of Records.

A MOTION WAS MADE TO DR. STUBBS AND SECONDED BY MR. WETHERBEE TO APPROVE THE FINAL ADOPTION OF AMENDMENTS TO RULE 108.72 AS PRESENTED AND PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

9. AGENCY DIVISION REPORTS.

a. Licensing Division.

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

A MOTION WAS MADE BY DR. VILLARREAL AND SECONDED BY DR. STUBBS TO APPROVE 20 PARENTERAL ANESTHESIA PERMIT APPLICATIONS. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

(2) Report of Nitrous Oxide and Enteral Conscious Sedation Permit Applications. Ms. Meek reported on the Nitrous Oxide and Enteral Conscious Sedation Permit Applications.

(3) Licensing Division Report. Ms. Meek reported on Licensing statistics through the close of FY 2007.

Ms. Meek reported that the Board designated the authority to approve applications for Licensure by Credentials to the Director of Licensing, by name. With the most recent staffing change in the offices of the Executive Director and Director of Licensing, Ms. Meek requested

(5) **Board Informal Settlement Conference (ISC) Settlement Orders.**

- (a) **June 15, 2007 Board ISC.** (Panelists: Dr. Purifoy and Mr. Wetherbee)

SBDE 06-0293-1209

A MOTION WAS MADE BY DR. MASON AND SECONDED BY DR. STUBBS TO APPROVE SETTLEMENT ORDER 06-0293-1209 FROM THE JUNE 15, 2007 BOARD ISC AS PRESENTED. (FOR – 10 / OPPOSED – 0 / ABSTENSIONS - 2) MOTION CARRIES

SBDE 06-1034-0814

SBDE 06-0529-0302; 06-1028-0810; 07-0750-0525

A MOTION WAS MADE BY DR. STUBBS AND SECONDED BY DR. MASON TO APPROVE THE SETTLEMENT ORDERS 06-1034-0814 AND SBDE 06-0529-0302; 06-1028-0810; 07-0750-0525 FROM THE JUNE 15, 2007 BOARD ISC AS PRESENTED. (FOR – 10 / OPPOSED – 0 / ABSTENSIONS - 2) MOTION CARRIES

- (b) **October 4-5, 2007 Board ISC.** (Panelists: Dr. Purifoy, Dr. Gough and Ms. Pauli)

SBDE 07-0521-0228

SBDE 05-0281-1214

SBDE 06-0454-0131

SBDE 07-0534-0306

SBDE 06-0413-0119

A MOTION WAS MADE BY DR. VILLARREAL AND SECONDED BY DR. MASON TO APPROVE THE SETTLEMENT ORDERS FROM THE OCTOBER 4-5, 2007 BOARD ISC AS PRESENTED. (FOR – 10 / OPPOSED – 0 / ABSTENSIONS – 2) MOTION CARRIES

(6) **Staff Informal Settlement Conference (ISC) Settlement Orders.**

- (a) **June 20, 2007 Staff ISC.** (Panelist: Dr. Strunk)

SBDE 07-0025-0913

A MOTION WAS MADE BY DR. PURIFOY AND SECONDED BY DR. MASON TO APPROVE SETTLEMENT ORDER SBDE 07-0025-0913 FROM THE JUNE 20, 2007 STAFF ISC. (FOR – 11 / OPPOSED – 0 / ABSTENSIONS - 1) MOTION CARRIES

- (b) **September 21, 2007 Staff ISC.** (Panelist: Dr. Mason)

SBDE 07-0302-1215

SBDE 06-0648-0410

A MOTION WAS MADE BY MR. WETHERBEE AND SECONDED BY DR. STUBBS TO APPROVE SETTLEMENT ORDERS FROM THE SEPTEMBER 21, 2007 STAFF ISC. (FOR – 11 / OPPOSED – 0 / ABSTENSIONS - 1) MOTION CARRIES

- (7) **Legal Division Report.** Mr. Houston presented the Legal Division Report, Legal Case Report, case statistics through October 2007 and the Post ISC Case Statistics Report.

- (8) **Report of Liaison to the Legal Division.** Mr. Wetherbee reported on the increased movement of cases through the Enforcement and Legal Divisions.

10. DECLARATIONS FROM BOARD MEMBERS INTERESTED IN SERVING AS SECRETARY OF THE BOARD.

Dr. McDonald announced that formal nominations and voting for the position of Secretary will be heard and conducted, respectively, at the January 2008 meeting. The term of the newly elected Secretary will begin at the conclusion of the January 2008 meeting. Dr. McDonald opened the floor for declarations from Board Members interested in serving as SBDE Secretary.

Mr. Wetherbee declared his availability and interest in serving as the SBDE Secretary.

11. EXECUTIVE DIRECTOR'S REPORT.

Ms. Meek reported on the agency's efforts to define and evaluate processes and will begin establishing goals relative to these processes beginning in January.

Ms. Meek reported that she, Fread and Lisa attended the 2007 Law and Liability Conference presented by the Office of the Attorney General. This conference presents issues of interest within state government with an opportunity to provide suggestions for implementing new processes that occurred during the last legislative session.

Ms. Meek reported the agency's concern over the departure of Holly Johnston, Director of the PRN. She stated that the agency is communicating with the Texas Pharmacy Association to ensure a smooth transition as a new director is hired in the near future.

Ms. Meek stated that the SBDE website facelift continues and Board Members will be informed when the final changes have been implemented.

The host of the SBDE Jurisprudence Assessment, eStrategy Solutions, will be launching Version 3 of its software system in the near future. Changes in the software system will improve ease of use and clarification for users visiting the website and purchasing the Jurisprudence Assessment.

Agency staff are developing opportunities to utilize Board Members during their time in Austin when attending meetings. Directors are also looking at cost-saving measures and reducing the workload associated with meeting materials as well. Board members are encouraged to submit suggestions as well.

Ms. Meek closed her reported sharing a few of the future morale activities scheduled for the agency during November and December.

10. PRESIDING OFFICER'S REPORT.

Dr. McDonald applauded Ms. Meek for her efforts to communicate information to the Board and for her efforts to increase morale and communication within the agency as well. He stated that Sherri has also taken steps to interface and network with other state agencies and legislators and their staff as well.

Dr. McDonald stated that Board Members will see a change in the membership of committees come the appointment of future members. The Board Member Training Program is in the final development stage. Agency staff will be ready to present materials and training when appointments are announced.

Dr. McDonald reported on his visit with Mr. Tony Gilman, liaison to the Governor, stating that relationship between the SBDE and Mr. Gilman has been positive and continues to evolve. The meetings held thus far have resulted in a good exchange of information. Dr. McDonald shared that Mr. Gilman has concluded his study of healthcare boards.

11. EXECUTIVE SESSION. No Executive Session was held.

12. PUBLIC COMMENTS.

Dr. Thomas Harrison, Past President of Texas Dental Association (TDA), presented positive comments pertaining to communications established by Ms. Meek with Ms. Mary Kay Linn, TDA Executive Director. He also thanked Ms. McKibben for recognizing the significant statistics on Licensing by Credentials.

Dr. Harrison reported on comments he made at a recent meeting of the TDA Board of Directors stating the need of more dentists to serve as consultants to the SBDE. TDA looks forward to the opportunity to pass along the names of interested individuals for consideration by the SBDE.

Dr. Harrison closed his comments stating that Dr. John Findley, former President of TDA in 1997-98, was recently elected president-elect of the ADA and will take office October 20, 2008 at the ADA Annual Session to be held in San Antonio, Texas.

13. ANNOUNCEMENTS. Dr. McDonald announced the following tentatively scheduled meetings:

- The Dental Hygiene Advisory Committee is tentatively scheduled for Friday, December 7, 2007.
- The Dental Laboratory Certification Council is tentatively scheduled for Friday, January 11, 2008.
- The next meeting of SBDE Committees are tentatively scheduled for Thursday, January 24, 2008.
- The next Board Meeting is scheduled for Friday, January 25, 2008.

14. ADJOURN. Dr. McDonald called for a motion to adjourn the meeting.

A MOTION WAS MADE BY DR. STUBBS AND SECONDED BY MR. WETHERBEE TO ADJOURN THE MEETING AT 12:33 P.M. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

- SIGNED -

- SIGNED -

GARY W. MCDONALD, D.D.S
Presiding Officer
Texas State Board of Dental Examiners

GEORGE STRUNK, D.D.S.
Secretary
Texas State Board of Dental Examiners

Date: January 25, 2008

Date: January 25, 2008