



TEXAS STATE BOARD OF DENTAL EXAMINERS

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BOARD MEETING MINUTES

August 8, 2014

1. CALL TO ORDER – BOARD MEETING.

Dr. Ramos called the meeting of the Texas State Board of Dental Examiners (TSBDE) to order at 8:34 a.m.

2. ROLL CALL.

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

Ms. Whitney Hyde, Ms. Evangelia V. Mote, and Mr. Timothy J. O'Hare were excused from the Board meeting.

a. Members Present:

Dr. Rodolfo G. Ramos Jr.	Presiding Officer
Dr. D. Bradley Dean	Secretary
Dr. Steven J. Austin	Member
Dr. Kirby Bunel Jr.	Member
Dr. James W. Chancellor	Member
Ms. Emily W. Christy	Member
Ms. Renée S. Cornett, RDH	Member
Dr. Christine M. Leedy	Member
Ms. Lois M. Palermo, RDH	Member
Mr. Lewis M. White	Member

b. Members Absent:

Ms. Whitney Hyde	Member
Ms. Evangelia V. Mote	Member
Mr. Timothy J. O'Hare	Member

c. Staff Present:

Ms. Julie Hildebrand	Executive Director
Ms. Sarah Carnes Lemp	Outgoing General Counsel
Ms. Nycia Deal	Incoming General Counsel
Ms. Simone Salloum	Assistant General Counsel
Ms. Irma Rodriguez	Director of Administration and Finance
Dr. Brooke Bell	Director of Dental Division
Ms. Lisa Jones	Director of Enforcement Division
Ms. Vicki Shoemith	Director of Licensing Division

3. REVIEW AND APPROVAL OF PAST MINUTES FROM THE MAY 9, 2014 BOARD MEETING.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY DR. AUSTIN TO APPROVE THE MINUTES AS WRITTEN. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

4. DISCUSSION OF AND ACTION ON PROPOSED AGREED SETTLEMENT ORDERS, CONSENT ORDERS, AND VOLUNTARY SURRENDER ORDERS.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY DR. CHANCELLOR TO APPROVE THE AGREED SETTLEMENT ORDERS AS PRESENTED. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. LEEDY TO APPROVE THE CONSENT ORDERS AS PRESENTED. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

5. PUBLIC COMMENTS.

Mr. Scott D. Benjamin, Mr. Keith Brewster, Mr. Dale Burgdorf, Mr. Jamie K. Burton, Ms. Monna Carpenter-Barin, Mr. Quinn Dufurrena, Mr. David A. Duncan, Mr. James C. Ho, Mr. C. R. Hoopingarner, Ms. Andrea K. Janik, Ms. Melissa L. Key, Ms. Jeanine Lehman, Ms. Donna G. Melin, Dr. Patrick R. Ruehle, Dr. Malcom T. Scott, Mr. Charles D. Stetler, and Ms. Karen Street signed-in to present public comments.

Ms. Christy stepped out at 9:50 a.m. and returned at 9:54 a.m.

The Presiding Officer called for a break at 9:55 a.m. The meeting reconvened at 10:06 a.m.

6. MISCELLANEOUS REPORTS.

6.1. Professional Recovery Network (PRN) Report.

Ms. Abel presented the PRN report.

6.2. Western Regional Examining Board (WREB) Dental Hygiene Report.

Ms. Palermo presented the WREB Dental Hygiene report.

6.3. Western Regional Examining Board (WREB) Report.

Dr. Ramos presented the WREB report.

7. DISCUSSION OF AND POSSIBLE ACTION CONCERNING COMMITTEE REPORTS.

7.1. Dental Laboratory Certification Council Committee (DLCC).

Ms. Saunders presented the DLCC report.

7.2. Laser Ad-Hoc Advisory Committee.

Dr. Austin related that the committee met on July 21, 2014. Dr. Dean, Ms. Cornett, and Dr. Leedy were in attendance. The committee considered whether Dental Hygienists should be permitted to utilize lasers for therapeutic purposes as adjunctive therapy to standard scaling and root planning.

The committee concluded that evidence-based literature indicated that dental lasers did not make a significant clinical difference when used in conjunction with scaling and root planing. Therefore, to permit hygienists to use lasers as adjunctive therapy to scaling and root planning might deceive the patient into thinking that they are receiving superior care and might cause the dental hygienist team to not use scaling and root planning to its full potential.

Ms. Salloum related that the committee considered amendments of Rule 114.1 and 115.2. The change required of 114.1 is intended to correct an aspect of the rule related to dental assistants that in 114.1 may imply that dental hygienists may not use lasers for any purpose.

Dr. Austin stated that in 115.2, the committee incorporated duties allowed by statute and language explicitly permitting hygienists to use lasers for diagnostic purposes and for the therapeutic purpose of stain removal.

Dr. Ramos confirmed that the committee believes the evidence supports the fact that lasers remove biofilm.
Dr. Ramos confirmed that the committee believes the laser is a cutting instrument.

Ms. Cornett indicated that she believed that there was not a consensus as to the committee's recommendation.
Ms. Cornett referenced the statute and rules, and stated that she believed the policy statement is sufficient and allows hygienists to use adjunctive therapies under the direct supervision and treatment planning and diagnosis of the dentist. Ms. Cornett indicated she believed the question was introduced because Legal was receiving questions about lasers, not because complaints had been received.

Dr. Dean provided a history on the policy statement.

Dr. Ramos asked whether a laser (other than Diagnodent) exists that is not capable of cutting.

Dr. Dean replied that no such laser exists.

Ms. Cornett commented that lasers exist with settings available at which cutting is not possible.

Dr. Ramos stated that the policy statement refers to the laser's capability of cutting, not a setting that is not capable of cutting.

Dr. Dean stated that there is no setting at which a laser would not disrupt tissue in some way.

Ms. Cornett replied that this returns the discussion to consideration of biofilm and bacterial load.

Dr. Dean replied that the fact is that no laser can be selective and disturb only the bacteria.

Ms. Cornett replied that the laser is as selective as an ultrasonic tool.

Dr. Ramos asked Dr. Benjamin (member of the public) to weigh in on the conversation. Dr. Benjamin related that low level laser therapy used in various wave lengths for bacterial reduction are available.

Dr. Dean agreed with Dr. Benjamin and added that low level lasers show no efficacy in treating periodontal disease.

Ms. Palermo disagreed with this idea based on comparison to the ultrasonics.

Ms. Palermo mentioned that she understood from the November meeting that no action was required on this issue and expressed her concern that there was no consensus of the committee as to the recommendation.

Dr. Ramos replied that it was reintroduced by a board member, and a committee was formed.

Ms. Palermo asked if there was a consensus within the committee that this rule be brought forward.

Dr. Ramos deferred to Ms. Carnes-Lemp for the recommendation. Ms. Carnes-Lemp related that there was no vote because the committee is advisory. However, the committee produced the recommendation before the board today.

Ms. Palermo asked who made the recommendation if there was no consensus of the committee.

Ms. Carnes-Lemp replied that it was the Chair of the committee.

Dr. Austin replied that he was the chair of the committee and believed the committee had an open discussion and reached the recommendation together.

Dr. Ramos agreed with Dr. Austin and commented that he assigned the committee to do just that. Dr. Ramos directed the Board to take action on the recommendation before them.

Ms. Palermo made the motion that the rule be tabled until the Dental Hygiene Advisory Committee is able to fully research it.

Ms. Carnes-Lemp stated the current motion on the floor must be addressed.

Ms. Palermo stated she did not hear anybody make the motion and second it.

Ms. Carnes-Lemp related that Dr. Austin proposed the rule change and it was seconded by Dr. Dean.

Dr. Leedy stated that as the committee meeting closed, it seemed questions remained within Legal as to the rules' statutory basis in the sense of the hygienists' scope of practice and scaling and root planning.

Ms. Carnes-Lemp related that the statute states that a dentist cannot delegate a surgical or cutting procedure on hard or soft tissue. Then, it states that the practice of dental hygiene includes the removing of stains, smoothing surfaces, polishing, topical application of drugs, x-rays, performs any other service task or procedure prescribed by board rule. There is no specific language discussing lasers.

A member of the public asked if the policy statement is inconsistent with the statute.

Ms. Carnes-Lemp related that it is consistent with the statute because it states that hygienists may not use lasers that are capable of cutting. Ms. Carnes-Lemp related that the issue legal is having has to do with whether a dental hygienist may use a laser on a setting that is not capable of cutting. A strict reading of the policy statement seems to indicate they may not. Ms. Carnes-Lemp indicated that she believed the intent would be that they will be able to use the Diagnodent.

A public visitor then asked Dr. Austin if there was a way to alter the policy statement without changing the rules that would provide the direction needed by the Legal division.

Dr. Austin stated that there were two problems. The first is that the policy statement is not enforceable.

Dr. Ramos stated that this was a true statement.

Dr. Austin then stated that the second problem is that the question would remain unanswered.

The public visitor stated that the policy statement seems clear in that a dental hygienist may not use a laser capable of cutting.

Ms. Cornett spoke to the 2010 ad hoc committee that drafted the policy statement. She indicated that it was intended to permit dental hygienists to use lasers to perform procedures.

Dr. Chancellor asked Legal if staff had received complaints.

Ms. Carnes-Lemp stated that she didn't believe so. She indicated Legal was receiving questions from the public as to the application of the policy statement.

Dr. Chancellor stated that if we are not actually dealing with patient complaints, a policy seems more appropriate than a rule.

Dr. Ramos asked Dr. Austin and Dr. Dean if Dr. Chancellor's points came up in their discussion during the committee.

Dr. Austin replied yes and that Ms. Cornett had expressed that point.

Dr. Ramos directed the Board to determine its action and inquired into further discussion?

Dr. Chancellor wanted clarification and related that two rules are proposed, 114.1 and 115.2. Can we segregate those or do you want to do them as a bundle?

Dr. Ramos replied that we are going to do the rules individually.

Ms. Salloum commented that if we the policy statement remains as is, the questions from the public do as well. Ms. Salloum further indicated that regardless of the Board's decision as to 115.2, she still recommends that 114.1 be amended because it still contains a definition that is in conflict with the policy statement.

Ms. Cornett asked whether the statute specifically addressed scaling and root planning

Ms. Salloum replied that it does.

Dr. Ramos stated that we have an action item on the floor, a first and a second regarding 115.2.

Dr. Dean countered with a point of order.

Dr. Ramos stated he wanted to consider 115.2 first and then return to 114.1.

Ms. Carnes-Lemp asked Dr. Austin if his original motion referenced 114.1 or both 114.1 and 115.2.

Dr. Austin stated that he made the motion for both.

Ms. Palermo stated that if Dr. Austin's motion had never been "seconded", then her motion to refer this to the committee was still alive.

Questions and discussion occurred between Ms. Carnes-Lemp, Ms. Hildebrand, Dr. Austin, Dr. Chancellor, Dr. Ramos, and Ms. Palermo about what motion was on the floor. The decision or consensus reached was that the motion on the floor and the vote would be for both 114.1 and 115.2.

8.3.15. Consideration of proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 114.1, Permitted Duties.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. DEAN TO PROPOSE AMENDMENTS TO RULE 114.1 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 8 / OPPOSED – 0 / ABSTAIN – 1) MOTION CARRIES.

8.3.12. Consideration of proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 115.2, Permitted Duties.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. DEAN TO PROPOSE AMENDMENTS TO RULE 115.2 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 3 / OPPOSED – 6) MOTION FAILS.

A MOTION WAS MADE BY MS. PALERMO AND SECONDED BY MS. CORNETT TO TABLE THE DISCUSSION ON THE ISSUE OF LASER WITH DENTAL HYGIENISTS UNTIL DHAC HAS HAD AN OPPORTUNITY TO REVIEW THE ISSUE, RESEARCH IT, AND MAKE RECOMMENDATIONS BACK TO THE BOARD. (FOR – 5 / OPPOSED – 3) MOTION CARRIES.

Dr. Ramos stated that this issue would be sent to DHAC and the Laser Committee

Dr. Austin asked what was the charge to the committee now that 115.2 was going to DHAC.

Dr. Ramos replied that DHAC makes a recommendation to the committee, and the committee makes a recommendation to the Board.

Dr. Austin invited feedback and comment on the question.

Dr. Ramos thanked Dr. Austin.

Dr. Ramos made the decision to discuss Rule 8.3.13.

Dr. Dean asked that within that rule modification, 115.2, didn't we also add in some of the content of the statute? So, that actually hasn't happened.

Ms. Carnes-Lemp indicated that it had not.

Ms. Cornett state that for point of order, is that advantageous for us to do that? If the statute already gives a list to repeat it in the rules?

Ms. Salloum stated that it does provide clarification so that people don't have to jump around from the statute to the rule and its all in one place.

8.3.13. Consideration of Withdrawal of Policy Statement – Use of Lasers by Dental Hygienists.
NO MOTIONS WERE MADE TO WITHDRAW POLICY STATEMENT - USE OF LASERS BY DENTAL HYGIENISTS AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 0 / OPPOSED – 0) NO FURTHER DISCUSSION NEEDED.

7.3. Ownership Ad-Hoc Advisory Committee.

Dr. Ramos related that this committee meeting was well-attended.

State law states that only a Dentist can own a dental practice. The committee was formed to consider issues of practice ownership and other issues implicated by that question.

Dr. Ramos asked TSBDE staff member Mr. Gober to provide a little information on the first DSO that came forward at the Informal Settlement Conference.

Staff Attorney Richard Gober discussed the different contract provisions the Legal Division has reviewed.

Dr. Ramos asked Mr. Gober to the financial side of the issue.

Ms. Cornett asked whether Heartland DSO utilized an independent contractor model.

Dr. Ramos deferred to Dr. Dean.

Dr. Dean thanked Dr. Gough, Dr. Bunel, Mr. White, and Mr. O'Hare for their time and contribution to the committee.

Dr. Dean clarified that a DSO may operate in the state of Texas and serve a dental practice in an administrative function.

Dr. Dean stated that the proposed amendments to 108.70 are intended to clarify licensees questions about contracting.

Dr. Dean deferred to the Legal division to address the proposed new rule 108.74.

Dr. Ramos thanked Dr. Dean for his time and efforts on this committee.

Dr. Dean commented on the importance of patient protection.

Dr. Ramos thank Dr. Dean for his comments.

Ms. Cornett asked if the difference between an employee and an independent contractor was relevant to the discussion.

Dr. Dean asked whether he should answer or defer to Staff.

Dr. Ramos related that he would let staff answer this question.

Ms. Carnes-Lemp explained that whether an employee or an independent contractor, a dentist may not enter into a contract that would permit improper influence.

Dr. Dean related that under 251.003(a)(4); only a dentist can own, maintain, or operate a practice that employs a dentist.

Ms. Cornett stated that a true independent contractor directs his or her own work. The hiring individual does not determine the materials or process.

Ms. Carnes-Lemp stated that pursuant to 254.0011, the Board may adopt rules relating to control of a dental practice.

Dentists may contract with whomever they want unless that contract will result in improper influence. The Board may adopt rules so long as they do not preclude a dentist from contracting with a DSO.

Dr. Ramos called for a motion on proposed rule 108.70.

Dr. Dean added that the consideration before the Board is whether or not to propose the amendment.
Dr. Dean added that as committee chair he would like to hold a face-to-face meeting with stakeholders.

Dr. Ramos stated that he was glad to hear that stakeholder input would be considered.

Dr. Leedy commented that she did not understand the urgency if the Board and the committee wanted to solicit feedback and gather information.

Dr. Leedy suggested tabling the decision until that process was completed.

Dr. Ramos stated that the 30-day public comment period could allow for that.

Dr. Dean stated that Rule 108.70 already existed, and the committee's intention was to clarify the language.
Dr. Dean also commented that the Disciplinary Matrix lacked specificity and required amendment.

Dr. Leedy asked why the process couldn't be slowed if an enforceable rule was already in place.

Mr. White added that he would like to hear from the DSOs before proceeding to demonstrate for the Board how the DSOs are operating legally.

Ms. Carnes-Lemp spoke on the procedure. She indicated that if a proposal were made today, the Board could take up to six months to consider that proposal before adopting or withdrawing it.

Ms. Hildebrand added that her concern is that without publication in the Register some interested parties may not be aware the Board is considering this issue.

She stated that a rule can be repropose or withdrawn and emphasized that a proposal is not an adoption.

Dr. Ramos added that in previous rule-making, numerous meetings were held before final adoption.

Dr. Ramos indicated that a motion and a second were on the floor.

8.3.16. Consideration of proposal of New Rule – 22 Tex. Admin. Code, Section 108.70, Improper Influence on Professional Judgment.

A MOTION WAS MADE BY DR. BUNEL AND SECONDED BY DR. DEAN TO PROPOSE NEW RULE 108.70 AND PUBLISH IN THE TEXAS REGISTER FOR 30 DAY PUBLIC COMMENT. (FOR – 8 / OPPOSED – 1) MOTION CARRIES.

Dr. Dean requested that legal specifically address the recommended proposal of new rule 108.74.

Dr. Ramos replied that the votes may move a little out of sequence.

8.5.1. Repeal of Current Rule – 22 Tex. Admin. Code, Section 108.70, Improper Influence on Professional Judgment.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. DEAN TO PROPOSE THE REPEAL OF CURRENT RULE 108.70 AND PUBLISH IN THE TEXAS REGISTER FOR 30 DAY PUBLIC COMMENT. (FOR – 8 / OPPOSED – 1) MOTION CARRIES.

8.3.17. Consideration of proposal of New Rule – 22 Tex. Admin. Code, Section 108.74, Dental Practice Responsibilities.

A MOTION WAS MADE BY DR. BUNEL AND SECONDED BY DR. AUSTIN TO PROPOSE NEW RULE 108.74 AND PUBLISH IN THE TEXAS REGISTER FOR 30 DAY PUBLIC COMMENT. (FOR – 8 / OPPOSED – 1) MOTION CARRIES.

Dr. Dean asked if there were any questions on 108.74 and indicated that it is intended as clarification for licensees with regard to obligations.

Dr. Ramos added that it emphasizes that full responsibility for violations lies with the dentist.

Dr. Leedy asked if the rule would apply to a dentist who owned any number of practices.

Ms. Carnes replied that a dentist may own as many practices as he wishes, and that 108.74 would apply to each.

Dr. Dean clarified that the owner of a dental practice must be a Texas licensed dentist.

Dr. Ramos thanked Dr. Dean and this committee for all their hard work on this rule.

The Presiding Officer called for a break at 11:30 a.m. The meeting reconvened at 11:51 a.m.

8. DISCUSSION OF AND POSSIBLE ACTION ON RULES.

8.1. Rule reviews in accordance with Texas Government Code, Section 2001.039.

8.1.1. Proposed Rule Review - 22 Tex. Admin Code, Chapter 117, Faculty and Students in Accredited Dental Schools.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY MS. CORNETT TO PROPOSE A RULE REVIEW OF CHAPTER 117 AS REQUIRED BY TEXAS GOVERNMENT CODE 2001.039. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

Ms. Christy and Dr. Bunel stepped out during the vote for 8.1.1. Vote was retaken before Item #10 on the Agenda to reach a quorum.

8.2. Final adoption of rules.

8.2.1. Final adoption of New Rule – 22 Tex. Admin. Code, Section 101.11, Employment by Estate of Dentist of Person Acting for Mentally Incompetent Dentist.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY MS. CHRISTY TO ADOPT NEW RULE 101.11 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.2. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 108.6, Report of Patient Death or Injury Requiring Hospitalization.

Dr. Dean recommended that we not adopt this rule as its purpose is captured by current language.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY MS. CHRISTY TO NOT ADOPT AMENDED RULE 108.6 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

A MOTION WAS MADE BY DR. BUNEL AND SECONDED BY DR. DEAN TO NARROW ITEM A FROM RULE 108.6 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.3. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 108.7, Minimum Standard of Care, General.

A MOTION WAS MADE BY MS. CHRISTY AND SECONDED BY DR. LEEDY TO ADOPT AMENDED RULE 108.7 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.4. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 108.8, Records of the Dentist.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY DR. AUSTIN TO ADOPT AMENDED RULE 108.8 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.5. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 108.13, Practice of Dentistry on Certain Children.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY DR. AUSTIN TO ADOPT AMENDED RULE 108.13 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.6. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 108.14, Pediatric and Special Needs Case Management, Protective Stabilization.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY MS. CORNETT TO ADOPT AMENDED RULE 108.14 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.7. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 110.5, Moderate Sedation.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY MS. CHRISTY TO ADOPT AMENDED RULE 110.5 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.8. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 110.6, Deep Sedation or General Anesthesia.

A MOTION WAS MADE BY DR. BUNEL AND SECONDED BY DR. CHANCELLOR TO ADOPT

AMENDED RULE 110.6 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.2.9. Final adoption of Amended Rule – 22 Tex. Admin Code, Section 110.9, Anesthesia Permit Renewal.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. CHANCELLOR TO ADOPT AMENDED RULE 110.9 WITHOUT CHANGES TO THE PROPOSED TEXT.
(FOR – 8 / OPPOSED – 1) MOTION CARRIES.

8.3. Proposal of rules.

8.3.1. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 101.1, General Qualifications for Licensure.

A MOTION WAS MADE BY MS. CORNETT AND SECONDED BY DR. AUSTIN TO PROPOSE AMENDMENTS TO RULE 101.1 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.2. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 101.2, Licensure by Examination.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. LEEDY TO PROPOSE AMENDMENTS TO RULE 101.2 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.3. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 101.3, Licensure by Credentials.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY MS. CHRISTY TO PROPOSE AMENDMENTS TO RULE 101.3 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.4. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 101.4, Temporary Licensure by Credentials.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY DR. BUNEL TO PROPOSE AMENDMENTS TO RULE 101.4 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.5. Consideration of Proposal of New Rule – 22 Tex. Admin. Code, Section 101.12, Provisional Licensing.

A MOTION WAS MADE BY MS. PALERMO AND SECONDED BY MS. CORNETT TO PROPOSE NEW RULE 101.12 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.6. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 102.1, Fee Schedule.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY DR. BUNEL TO PROPOSE AMENDMENTS TO RULE 102.1 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.7. Consideration of Proposal of New Rule – 22 Tex. Admin. Code, Section 107.27, Temporary Suspension Rule.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY DR. AUSTIN TO PROPOSE NEW RULE 107.27 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.8. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 107.300, Registration of Non-Profit Corporations Authorized to Hire Dentists.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY MS. CORNETT TO PROPOSE AMENDMENTS TO RULE 107.300 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.9. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 108.4, Names of Dentists.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY DR. BUNEL TO PROPOSE AMENDMENTS TO RULE 108.4 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.10. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 108.52, Names and Responsibilities.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. CHANCELLOR TO PROPOSE AMENDMENTS TO RULE 108.52 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.11. Consideration of Proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 114.6, General Qualifications for Registration or Certification.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. BUNEL TO PROPOSE AMENDMENTS TO RULE 114.6 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.12. Consideration of proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 115.2, Permitted Duties.

8.3.12. – DISCUSSED AND VOTE OCCURRED UNDER 7.2. – LASER AD-HOC ADVISORY COMMITTEE

8.3.13. Consideration of Withdrawal of Policy Statement – Use of Lasers by Dental Hygienists.

8.3.13. – DISCUSSED AND VOTE OCCURRED UNDER 7.2. – LASER AD-HOC ADVISORY COMMITTEE

8.3.14. Consideration of proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 117.2, Dental Faculty Licensure.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY DR. LEEDY TO PROPOSE AMENDMENTS TO RULE 117.2 AND PUBLISH IN THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.3.15. Consideration of proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 114.1, Permitted Duties.

8.3.15. – DISCUSSED AND VOTE OCCURRED UNDER 7.2. – LASER AD-HOC ADVISORY COMMITTEE

8.3.16. Consideration of proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 108.70 Improper Influence on Professional Judgment.

8.3.16. – DISCUSSED AND VOTE OCCURRED UNDER 7.3. – OWNERSHIP AD-HOC ADVISORY COMMITTEE.

8.3.17. Consideration of proposal of Amendments to Rules – 22 Tex. Admin. Code, Section 108.74, Dental Practice Responsibilities.

8.3.17. – DISCUSSED AND VOTE OCCURRED UNDER 7.3. – OWNERSHIP AD-HOC ADVISORY COMMITTEE.

8.4. Withdrawal of rules.

8.4.1. Consideration of Withdrawal of proposal of New Rule – 22 Tex. Admin. Code, Section 108.15, Notification of Discontinuance of Practice.

A MOTION WAS MADE BY DR. CHANCELLOR AND SECONDED BY MS. CHRISTY TO WITHDRAW PROPOSAL OF NEW RULE 108.15. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

8.5. Repeal of rules.

8.5.1. Repeal of Current Rule – 22 Tex. Admin. Code, Section 108.70, Improper Influence on Professional Judgment.

8.5.1. – DISCUSSED AND VOTE OCCURRED UNDER 7.3. – OWNERSHIP AD-HOC ADVISORY COMMITTEE.

The Presiding Officer called for a lunch break at 12:40 p.m. The meeting reconvened at 2:03 p.m.

9. DISCUSSION OF AND POSSIBLE ACTION ON AMENDMENTS TO DISCIPLINARY MATRIX.

Ms. Salloum related Staff's recommendation of proposed amendments to the Matrix, including the replacement of "conditional dismissal" with "remedial plan" and the addition of action related to rules proposed by the Board.

Dr. Dean asked if amending the Matrix requires the same process rule-making does. change to the matrix?

Dr. Ramos asked staff if a motion was required to amend.

Ms. Hildebrand replied that it would be posted as a non-rule in the Texas Register.

Dr. Leedy asked whether the Matrix should be modified prior to the adoption of proposed rules reflected in the recommended amendments to the Matrix. Ms. Hildebrand asked on Ownership?

Dr. Ramos replied yes, stating that some of the recommended amendments reflect rule changes that haven't been adopted.

Dr. Dean replied that he didn't think so because the Matrix is founded on statutory language, not the specific language of the rules.

Ms. Hildebrand agreed that the Board already holds authority to take action on the conduct addressed in the proposed rules. The proposed rules and the recommended amendments of the Matrix are an attempt to clarify and provide better guidance.

Dr. Ramos stated that being said, he asked Dr. Dean to make a motion.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY MS. CORNETT TO ADOPT THE DISCIPLINARY MATRIX PROPOSED BY STAFF AND POST TO THE TEXAS REGISTER FOR 30-DAY PUBLIC COMMENT. (FOR – 8 / OPPOSED – 1) MOTION CARRIES.

A vote was retaken on agenda item 8.1.1. to reach a quorum. Please see agenda item 8.1.1. above.

10. AGENCY DIVISION ACTIVITY REPORTS.

10.1. Finance and Administration Division Report.

Ms. Rodriguez presented the Operating Budget from September 1, 2013 – July 31, 2014 and related that the agency is 80% expended. She estimates that \$50,000 will not be utilized this fiscal year. She also related that there was a 1% across the board salary raise that employees got back in September and that a 2% salary raise would occur for fiscal 2015 as mandated by the Legislature which begins September 1, 2014.

There are currently 53 1/2 FTEs some of which are vacant. Ms. Rodriguez related that her division lost two employees and positions would be refilled. Currently, they are working on filling the Accountant III position. For next year, two new positions would be added. An Information Specialist and an IT Specialist. This will take our FTEs next year to 55 1/2.

Ms. Rodriguez related that the agency was undergoing one small renovation project; a small conference room.

Lastly, Ms. Rodriguez discussed the LBB report and the Exceptional Items requested of the Legislature.

Ms. Cornett stepped out at 2:30 p.m. and returned at 2:37 p.m.

10.2. Licensing Division Report.

Ms. Shoemith presented licensing statistics, a progress report on business processes as well as the turn around time of all of their applications and they are within the performance measures set by LBB. The division will continue to align itself with the agency's Strategic Plan and work on customer services.

Ms. Shoemith discussed and related information on the Questionnaire.

They are currently working on downloading the data they have received since September.

Her division is now fully staffed with the addition of three new employees.

10.3. Enforcement Division Report AND 10.4. Dental Division Report.

Ms. Jones and Dr. Bell presented the Enforcement and Dental Division reports together.

Ms. Jones discussed quarterly statistics for the division and implementation of self-report forms.

10.5. Legal Division Report.

Ms. Carnes-Lemp reported on Legal case statistics and current case statistics.

11. EXECUTIVE SESSION PURSUANT TO TEX. GOVT CODE § 551.071 (TEXAS OPEN MEETINGS ACT) TO RECEIVE LEGAL ADVICE ABOUT PENDING LITIGATION.

11.1. Mr. Jim Todd, Assistant Attorney General will address Board regarding AAID, et al. v. Julie Hildebrand, et al.

Per the Presiding Officer, 11.1. would be discussed after Agenda Item #12 and #13.

12. CONSIDERATION AND POSSIBLE ACTION ON HEARINGS AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS (SOAH).

12.1. Administrative Law Judge Proposals for Decision.

Docket No. 504-14-2712, Earl B. Bercovitch, Applicant for Dental Licensure.

- Consideration of the Administrative Law Judge's Proposal for Decision in Docket No. 504-14-2712.

- Consideration of Staff's Recommendations for Disposition of Docket No. 504-14-2712, including Adoption of the Proposal for Decision's Findings of Fact and Conclusions of Law with/without Modifications.
- Consider recommendations and take action: Earl B. Bercovitch, Applicant for Dental Licensure.

A MOTION WAS MADE BY DR. DEAN AND SECONDED BY DR. AUSTIN TO ACCEPT THE PROPOSAL FOR DECISION AS WRITTEN, ADOPT THE ORDER OF THE BOARD AND DENY A DENTAL LICENSE TO EARL B. BERCOVITCH.
(FOR – 9 / OPPOSED – 0) MOTION CARRIES.

12.2. Default Orders from SOAH.

Docket No. 504-14-2248, Arthur Coleman, DDS, Texas Dental License Number 15557.

- Consideration of the Administrative Law Judge's Order No. 2 Dismissing Case from Docket in Docket No. 504-14-2248.
- Consideration of Staff's Recommendations for Disposition of Docket No. 504-14-2248, including Adoption of the Order of the Board.
- Consider recommendations and take action: Arthur Coleman, DDS, Texas Dental License Number 15557.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. CHANCELLOR TO ADOPT THE ORDER OF THE BOARD AND REVOKE TEXAS DENTAL LICENSE NUMBER 15557 ISSUED TO ARTHUR COLEMAN. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

13. CONSIDERATION OF AND POSSIBLE ACTION ON ALTERNATIVE CONTINUING EDUCATION REQUESTS.

Ms. Carnes -Lemp discussed a waiver request related to continuing education. The requestor wants to complete self-study CE. The requestor asks that he be permitted to perform the self-study CE online at home.

A MOTION WAS MADE BY DR. AUSTIN AND SECONDED BY DR. DEAN THAT THE REQUEST IS UNNECESSARY AND HE CAN FULFILL THE 12 HOURS OF CE WITH ON-LINE COURSES AND DO THEM AT HOME.
(FOR – 7/ OPPOSED – 2) MOTION CARRIES.

Dr. Ramos and Ms. Carnes-Lemp announced that we would now go into Executive Session - Agenda Item #11. Non-critical agency staff and public members were asked to step out of the room for the discussion with Mr. Jim Todd and would be allowed to return once the session concluded.

14. EXECUTIVE DIRECTOR'S REPORT.

Ms. Hildebrand related that all divisions are moving forward as planned.

Ms. Hildebrand completed the second week of management training via the Governor's Center.

The Strategic Plan was finalized since the last board meeting and turned in on time.

A staff workshop was held on July 28, 2014 regarding the Strategic Plan, and an Action-Plan was created.

The Health and Human Services committee is holding a hearing on the implementation of HB 3201. We have already submitted a summary.

The first budget meeting is coming up with the LBB, the Governor's Office and staff from different Legislators. They will mostly ask questions about the LAR. We are not asking for additional FTEs.

15. PRESIDING OFFICER'S REPORT.

Dr. Ramos thanked Dr. Gough and publicly recognized her for the ten years she dedicated and committed for the Dental Board. A plaque was presented to Dr. Gough on behalf of the Board members and the Dental Board. Dr. Ramos thanked Ms. Carnes-Lemp for her hard work, wished her the best, and that she would be missed. Dr. Ramos thanked the board for all their hard work and dedication.

16. ANNOUNCEMENTS.

Next Board Meeting: Friday, November 21, 2014.

17. ADJOURN.

A MOTION WAS MADE BY MS. CORNETT AND SECONDED BY DR. CHANCELLOR TO ADJOURN THE MEETING AT 4:30 P.M. (FOR – 9 / OPPOSED – 0) MOTION CARRIES.

- SIGNED -

- SIGNED -

RODOLFO G. RAMOS JR., DDS, PC
Presiding Officer

D. BRADLEY DEAN, DDS
Board Secretary

November 21, 2014

November 21, 2014