



TEXAS STATE BOARD OF DENTAL EXAMINERS

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BOARD MEETING MINUTES August 27, 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:

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| Dr. J. Kevin Irons | Presiding Officer |
| Dr. Gary W. McDonald | Secretary |
| Ms. Tammy Allen, RDH | Member |
| Mr. Oscar Garcia | Public Member |
| Ms. Amy Juba | Public Member |
| Dr. Martha Malik | Member |
| Dr. Norman Mason | Member |
| Ms. Marti Morgan | Public Member |
| Ms. Phyllis Stine | 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:

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| Ms. Helen McKibben, RDH | Member (Excused) |
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c. TSBDE Staff Present:

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| 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. Laura Kelley | Attorney |
| Ms. Heather Fritz | Attorney |
| Mr. Rob Hill | Attorney |
| Ms. Vicki Shoemith | Executive Assistant |
| Ms. Barbara Jenschke | Licensing Coordinator |

d. Others Present:

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|----------------------|--------------------------------------|
| Ms. Renee Cornett | Dental Hygiene Advisory Committee |
| Mr. Bob Hull | Professional Recovery Network |
| Ms. Holly Johnston | Professional Recovery Network |
| Dr. Patricia Blanton | Texas Dental Association |
| Mr. Jay Bond | Texas Dental Association |
| Ms. Rebecca Fontenot | Texas Dental Hygienists' Association |
| Ms. Alicia Grant | Texas Dental Hygienists' Association |
| Mr. Jerry Valdez | Pavlik & Valdez Legal Consultants |
| Ms. Laura Burroughs | Public Guest |
| Tiffany Bailey | Public Guest |
| Dr. Todd Bonin | Public Guest |
| Dr. Jack Burroughs | Public Guest |
| Kyle Bailey | Public Guest |
| Dr. Ed H. Franklin | Public Guest |
| Mr. Jim McClendon | Public Guest |
| Ms. Kelly Ronas | Public Guest |
| Ms. Gala Strunk | Public Guest |
| Mr. Robert Zoch | Public Guest |

A MOTION WAS MADE BY DR. STUBBS, SECONDED BY MR. WETHERBEE TO EXCUSE MS. McKIBBEN, FROM THE MEETING. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

3. REVIEW AND APPROVAL OF PAST MINUTES.

Dr. Irons entertained a motion to approve the Minutes of the April 16, 2004 Meeting of the Texas State Board of Dental Examiners with the following changes:

- Page 5, Paragraph 11, Line 3, Add an open quotation mark before the word “so.”
- Page 5, Paragraph 11, Line 5, Add a closed quotation mark after the word “chance.”
- Page 6, Paragraph 2, Line 1, Delete the word “on”, should read: “impact his ability...”
- Page 6, Paragraph 6, Line 1, Add an “S” after the word “feel” and change the word “your” to now read “his”. Should read: “...feels confident in his ability...”
- Page 7, Paragraph 2, Line 2, Change the second word “take” to now read “test”. Should read “him to take the test...”
- Page 9, Paragraph 9, Line 2, Change to reflect that WREB is easier to calibrate than NERB.

A MOTION WAS MADE BY DR. VILLARREAL, SECONDED BY DR. MASON TO APPROVE THE MINUTES AS AMENDED FROM THE APRIL 16, 2004 MEETING. (FOR - 13 / OPPOSED - 0) MOTION CARRIES.

4. APPEARANCES BEFORE THE BOARD.

a. Ed. H. Franklin, DDS. License No. 7466 – Request for Modification to Board Order 98-402-0430.

Mr. Houston stated that Dr. Ed Franklin is appearing before the Board seeking authorization to reapply for his controlled substance drug permits in accordance with Board Order SBDE 98-402-0430, Paragraph #3. Dr. Franklin received the Board Order as a result of prescribing Hydrocodone, a Schedule III drug, to himself and other individuals for a non-dental purpose. Dr. Franklin also received Board Order 1988-36 for improper

prescribing and abuse of a Schedule II drug. The Board has received letters in support of Dr. Franklin's request from Mr. Paul McCollum of the Council on Alcoholism and Drug Abuse, and Mr. Bob Robinson of the Texas Professional Recovery Network. The Peer Assistance Program currently under contract with the TSBDE, Professional Recovery Network (PRN), states that they have no concerns regarding Dr. Franklin's recovery and well-being and that all of his drug screens have been negative and his reports, and contacts have been on time.

Dr. Franklin requested return of his DEA License as it has been a problem for his practice.

Mr. Wetherbee asked if the Board Order, or probation, has been completed.

Mr. Houston responded that there was a 10-year probation still in effect until 2008 with 5 years of compliance.

Mr. Houston asked Ms. Johnston if Dr. Franklin were to receive his Drug Schedules is there a program or procedures for monitoring those prescriptions.

Ms. Johnston stated that there is no program in place at this time. She also added that the previous peer assistance program did have an agreement related to prescription monitoring.

Mr. Houston asked Ms. Johnston if Dr. Franklin could make monthly reports on his prescribing habits.

Ms. Johnston stated that Dr. Franklin could submit monthly reports.

Mr. Garcia stated that the situation before the Board is an addiction problem with one relapse, then five years of clean testing, that he is in favor of approving Dr. Franklin's request contingent upon a program being established for monitoring his prescription writing.

Dr. Irons asked Mr. Houston how we would go about monitoring Dr. Franklin's prescription writing.

Mr. Houston stated that since Dr. Franklin is participating in the PRN Program it would be an obligation and duty of the PRN, that we would normally delegate that to them.

Dr. Tippit stated that he is concerned with precedent and not becoming inundated with people modifying Board Orders. He doesn't see a tremendous need for this in terms of day-to-day practice on Dr. Franklin's part, and even if there were a need, he feels that an event in 1988 and recidivism another 10 years later, that if there were another event, it could be viewed that this Board is not meeting its responsibilities in terms of serious enforcement. He is opposed, in general, to modification of a suspension based on drug abuse that it's a very serious problem in the dental profession and needs to be dealt with accordingly.

Dr. Tippit stated that based on the chemical dependency issues, there was a reason the Settlement Conference Panel voted to probate until 2008, and feels that in extreme circumstances, he would agree with Ms. Johnston's stance but doesn't view this as an extreme circumstance because there's been recidivism.

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY MS. ALLEN TO DENY THE MODIFICATION OF BOARD ORDER 98-402-0430. (FOR – 9 / OPPOSED – 4) MOTION CARRIES.

b. Mark Todd Bonin, DDS, License Number 15387 – Request for Modification to Board Order 98-203-1229RG.

Mr. Houston reported that Dr. Bonin is appearing before the Board seeking authorization to reapply for his controlled substance permit and Nitrous Oxide permit through modification of Board Order 98-203-1229, Paragraphs 3 and 4, which required Dr. Bonin to surrender his permits as a result of addiction to a controlled substance. Dr. Bonin later served one year of downtime due to continued use of a controlled substance. Dr. Bonin also received Board Orders due to records violations and failure to comply with Continuing Education (CE) requirements. The PRN states that they

have no concerns regarding Dr. Bonin's recovery and well-being and that all of his drug screens have been negative and his reports, and contacts have been on time.

Dr. Bonin addressed the Board stating that he has been working hard to get back on his feet these last four to five years. He added that he works in the small town of Magnolia, seeing a lot of patients where there is a need for him to prescribe stronger medications for the surgeries, root canals and tooth ache treatment that he performs. He feels his life is back on track and this request is the next step he would like to take in his recovery.

Dr. Tippit stated that he was partially involved in one of the Informal Settlement Conferences and asked Dr. Bonin to describe for him what he did during the downtime levied by the Board.

Dr. Bonin responded that the downtime gave him a lot of time to think and learn to appreciate what he had, that at one time he lost interest in dentistry and he's come to find he missed it and his patients. Dr. Bonin stated that during the downtime he enjoyed teaching Anatomy and Physiology at a Community College and has remained on staff. Since moving to Magnolia; however, he hasn't had time to go back and teach.

Dr. Tippit asked Dr. Bonin to describe his experience with Dr. Fulton and did he find value in that.

Dr. Bonin stated that he felt it was a positive experience and enjoyed the opportunity to work with patients and among the other dental professionals.

Mr. Houston stated that in this particular case Staff has the same concern, recidivism, but we do acknowledge that he does have a small town practice and if there are some extenuating circumstances based upon that in terms of making sure there are appropriate practice avenues in that community that could perhaps be an additional reason to consider granting a modification to a Board Order if that's the Board's determination, but Staff still has the basic concerns with regard to recidivism.

Dr. Tippit stated that he applauds Dr. Bonin's efforts. He further added that the TSBDE is not a rehab organization, but an enforcement organization, and as such there have to be consequences to certain behaviors. Dr. Bonin is well on his way to recovery, but when a Board Order is issued due to chemical dependency, the Order should stand, unless there are extreme circumstances.

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY MS. ALLEN TO DENY THE REQUEST OF MARK TODD BONIN, DDS, TO MODIFY BOARD ORDER 98-203-1229RG. (FOR – 12 / OPPOSED – 1) MOTION CARRIES.

c. John G. Rodriguez, DDS, License No. 14566 – Request for Modification to Board Order 01-554-0516RG.

Mr. Houston stated that Dr. Rodriguez is seeking to extend the time for payment of his fine and to end his participation in the PRN Program before its scheduled termination on June 7, 2005 through modification of Board Order 01-554-0516RG. Dr. Rodriguez is not appearing today; however, for clarification, Dr. Rodriguez's fine of \$8,000 is partially paid; and was to be completed by June 7, 2004, so part of the request is to extend payments to December 7, 2004. The second part of Dr. Rodriguez's request is to end his participation in the PRN Program which would end naturally on June 7, 2005.

Dr. Villarreal requested to be recused from voting in this case.

A MOTION WAS MADE BY DR. MALIK, SECONDED BY MR. WETHERBEE TO APPROVE THE REQUEST TO GRANT EXTENSION OF PAYMENT TOWARDS THE \$8,000 FINE AND DENY THE REQUEST FOR EARLY TERMINATION IN THE PRN PROGRAM. (FOR – 12 / OPPOSED – 0 / ABSTENTIONS - 1) MOTION CARRIES.

5. COMMITTEE REPORTS.

a. Enforcement Committee Report.

Dr. McDonald reported that the Enforcement Committee met on August 26, 2004. The Committee approved proposed language changes in Rules 107.101(c) and 107.102(c) which will be addressed in the Rules Section of this Meeting's Agenda. The Committee decided to Table Rule 108.6 to the November 2004 Committee Meeting pending further investigation into the definition of the terms "injury" and "hospitalization."

b. Executive Committee Report.

Dr. Irons reported that the Executive Committee met on August 26, 2004 to discuss and consider action regarding policies and guidelines for the PRN. After lengthy discussion, the Committee voted to have Dr. Strunk develop guidelines for the PRN and develop a manual in conjunction with the Enforcement and Legal Divisions, that standardize policy, procedure, and protocol as it relates to the monitoring of the PRN program.

c. Licensing Committee Report.

Dr. Malik reported that the Committee approved two requests for Alternative CE which were for health reasons.

Dr. Malik stated that the Committee discussed the Infection Control Beta Examination and approved a cut score of 60 percent and a cut score of 70 percent for the Jurisprudence Exam.

Dr. Malik covered some of the Committee's discussion and consideration of public comments to Rule 104.1(3) pertaining to CE for dentists and dental hygienists stating that the amendments require dentists and dental hygienists take an additional three hours of continuing education in the area of jurisprudence to be completed every three years. She further added that the Board received a comment from the Texas Dental Association requesting that the 3-hour requirement be included in the existing 12-hour annual requirement. After considering the comment, the Licensing Committee declined to make the change. The current 12-hour requirement is a statutory minimum requirement, and the additional three hour requirement over a course of three years is not an onerous additional burden. Dr. Malik also added that this CE can be completed online, through self-study or by lecture.

Dr. Malik reported that the Dental Assistant Registration Program will be put into action on September 1, 2004.

d. Legislative Committee Report.

Ms. Juba reported that the Legislative Committee met on August 26, 2004 to review what has transpired year-to-date in preparation for the 79th Legislative Session. The primary issue the Board must communicate to the Legislature is that Staff salaries are not at parity of those of similar positions at other Regulatory Agencies, and are in fact 20 percent lower, leading to the Dental Board's 58 percent turnover rate compared to 17 percent Statewide in FY 2003.

Ms. Juba shared highlights of Mr. Schmidt's report that he and Dr. Irons have had meetings with the staff of several key Legislators on the Senate Finance and House Appropriations Committee. She covered a part of Mr. Schmidt's four-phase plan which includes meetings with the Legislative Budget Board and Governor's Budget Office, the House Appropriations Committee and Senate Finance Committee, as well as second visits to all key law makers during October and November.

Ms. Juba reported that a 10-Item Exceptional Request was submitted with the Legislative Appropriations Request (LAR) which could be offset by new revenues that the Board will take in during the biennium for Dental Assistant registrations. Information also has been prepared and distributed to Legislative offices that includes statistics highlighting the Agency's improved and outstanding performances in the Enforcement and Legal Divisions.

Ms. Juba reported that the Committee discussed the role of Board Members in the legislative process and the legal parameters that define lobbying. The Legislative Committee commended Mr. Schmidt and Board Staff

for gathering the data and preparing the materials to take to the Capitol on the Board's behalf. In light of these suggestions, the Board asked Staff to consider re-implementing an additional Board Meeting, or at least a Legislative Committee Meeting in June, during the even-numbered years, to avoid the long four-month lag between the April and August meetings.

Ms. Juba closed her report stating that the Committee requested Staff spell out the parameters of Board Members' ability to participate in Legislative discussions; for Dr. Irons to clarify the charge to the Legislative Committee, to involve the Stakeholders and Trade Associations and seek their support and assistance with key Legislators. Finally, the Committee asked Staff to present them a written plan and timeline for Legislative efforts beginning August 2004 through August 2005.

Speaking personally, Ms. Juba urged the Executive and Administrative arms of this Board to communicate regularly with Board Members since only four Board Meetings are conducted a year to ensure appropriate checks and balances and representation of all Board Members occurs.

e. Medicaid Fraud Ad-Hoc Committee Report

Dr. McDonald reported that this Committee has not met and there have been no direct communications with our Ad-Hoc Committee from the Governor's Office; however, the Governor did issue an Executive Order with respect to Medicaid Fraud and Abuse which Mr. Schmidt forwarded to Board Members. Dr. McDonald stated that we have made it abundantly clear that we have our people in position and we're on deck.

f. American Association of Dental Examiners (AADE) Report. Dr. Malik stated that the AADE will be meeting in October and a report will be provided to the Board at the November 2004 meeting.

g. Western Regional Examining Board (WREB) Report.

Dr. Malik reported that the Board of Directors from WREB met recently and made decisions for the 2005 exam season. The operative portion of the exam will include two of the following three dental procedures: An amalgam preparation and finish; a composite preparation and finish; and an indirect gold preparation and finish. If the amalgam and composite are chosen, only one of the two preparations may be a slot design. The Endodontic portion of the exam will include an access and condensation completion on both an anterior and posterior natural tooth. The teeth will be mounted in sextants in an upper and/or lower arch that will reproduce an actual clinical setting.

The Prosthodontic portion of the exam will be computer-generated and administered at designated sites across the country. The candidate will be allowed to take the Prosthodontics Exam during the 45-day period immediately preceding the clinical exam and up to 3 days after the clinical exam. If this portion of the exam is failed, the candidate may have up to one year to retest and must receive a score on the retake of 75% to pass. If for any reason the computerized version of the Prosthodontics Exam is not completed for the 2005 exam season, the test will be given at the exam site with the appropriate models and questions.

The clinical portion of the Periodontal Exam will include scaling and root planning of eight surfaces of heavy subgingival calculus in one or two quadrants on a patient of the candidate's choosing and an additional Periodontal assessment and diagnosis on a patient provided by WREB.

The candidate will be required to score a minimum of 55% on each component of the exam. Failure to obtain the minimum passing rate in a section will result in failure of the exam even if the overall score of 75% (passing total score for exam) or greater. The candidate will be allowed to retake the section(s) he/she failed at least two more times within a year of the date of the first exam taken. When the exam section is taken for a second or third time, the pass rate is 75%. If the candidate fails the exam section within a year, the entire WREB exam, all sections, must be retaken.

The cost of the WREB exam is \$1,175. The cost to retake an individual section of the WREB exam is \$650 not to exceed \$1,175 when multiple sections are retaken. The retake of a section will be accomplished at a regularly scheduled WREB exam.

Dr. Malik shared that the fail rate for WREB is 6 percent. She also shared information on discussions that the American Dental Association (ADA) is interested in developing a National Board III, and they want a National Board across the United States which would be a licensing exam, but no live patients. It hasn't been clear if this will encompass dental hygiene.

Dr. Malik stated that Personal Digital Assistants will no longer be used for calibration, they will be used for check-in and check-out and WREB will look for other technical solutions.

Dr. Malik read from a WREB document that the Skills Assessment Exam is ready and it can be used by States to evaluate the dentist that have not practiced for an extended of time or rehabilitated from drug or alcohol abuse, or need remediation or discipline. The exam is offered at each schedule WREB exam site. Part I is an amalgam preparation and cast full gold crown preparation on a typodont. If a candidate passes this part successfully then they will do a Class II amalgam preparation finish on a patient (4-hour procedure). Part III is optional and consists of Endodontically treating one anterior and posterior tooth mounted in a typodont (4-hour procedure). The cost for the Skills Assessment Exam is \$1,075 plus a school use fee. For a Cognitive Skill Assessment WREB has a Prosthodontics Exam, Periodontal Assessment and National Board or NERB has a written exam.

Dr. Malik covered other business items from WREB that included a request from the University of Pittsburgh and Temple University who want WREB to come and give exams in the 2005 Season.

The Presiding Officer called for a recess at 9:16 a.m. The Board resumed business at 9:45 a.m.

6. OTHER REPORTS.

a. Enforcement Database Report.

Dr. McDonald stated that he and Mr. Schmidt met with Northrop-Grumman, the State-contracted Information Management/Information Technology service provider, in March of 2004 to begin work on this database. Northrop-Grumman subcontracted the project to Mr. Shannon Swenson with Stream Studios to begin work upgrading and improving the database for our users.

At the March meeting with Northrop-Grumman and Stream Studios, we were presented with contractual matters that required attention which resulted in minor delays. One matter involved the set-back in the project implementation date approximately 60 days. It was originally set for at the end of the Fiscal Year. Another matter involved the delay of FileMaker Incorporated's release of the upgraded version to the FileMaker6 software program we currently use. Dr. McDonald stated that once Mr. Swenson has upgraded the FileMaker6 program the database will be up and running and should be fully operational at the end of October 2004. Dr. McDonald has asked Mr. Swenson to make a brief presentation of the database at the November 2004 Board Meeting. The project has come in within budget with the monies appropriated without further need of requesting funds from the Legislature.

b. Dental Hygiene Advisory Committee Report.

Ms. Cornett reported that the Dental Hygiene Advisory Committee (DHAC) met on Friday, July 23, 2004.

The Committee discussed and unanimously supported the amendment to Rule 108.25 which considers dental health care workers with administrative edits. Similarly, the DHAC discussed and unanimously supported the amendment to Rule 103, regarding dental hygiene licensure with administrative edits.

The DHAC approved the process and corresponding application form to be used for the selection of the dental hygienist DHAC will recommend to the Board as a new WREB examiner for each fiscal year beginning with FY 05-06. The application form will be available to interested dental hygienists via the SBDE website and various constituencies will be enlisted to assist with the dissemination of the related information. The application submission deadline is February 1st for consideration for the following fiscal year.

The recommendation to the Board for the dental hygiene WREB examiners for the FY 04-05 is:

**WREB 2004 (FY 03-04) Cycle
Recommendations**

Tammy Allen (SBDE) Helen McKibben (SBDE)
 Cheryl Burke (DHAC) Jeannie Sosa (DHAC)
 Lisa Cooper Laurie Miller
 Lana Crawford Gloria Zacek
 Tammy Fisher
 Carolyn Jackson

**WREB 2005 (FY 04-05) Cycle
Recommendations**

Replace the non-SBDE/non-DHAC individual who has held the longest term as a recommended examiner with the remaining current DHAC member, Renee Cornett.

Lastly, Ms. Cornett stated that the DHAC requests the Board revisit the topic of using lasers by Dental Hygienists. This topic is addressed in the Rules and Regulations, Chapter 115 when defining irreversible procedures. The Committee requests the Board review the rules in consideration of current clinical techniques that employ laser technology that are appropriate for use by a dental hygienist. An example of such an application of laser technology is the KaVo Diagnodent which serves as a supportive diagnostic tool.

c. Professional Recovery Network (PRN) Report.

Mr. Bob Hull and Ms. Holly Johnson, representing the PRN, provided a Third Quarter progress report.

| <u>Licensees</u> | 1 st Quarter | | | 2 nd Quarter | | | 3 rd Quarter | | | 4 th Quarter | | |
|----------------------------------|-------------------------|-----------|-----------|-------------------------|-----------|-----------|-------------------------|-----------|-----------|-------------------------|-----------|-----|
| | Sept | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | June | July | Aug |
| Dentists | | | | | | | | | | | | |
| Board Ordered | 20 | 20 | 20 | 20 | 21 | 19 | 18 | 19 | 19 | 12 | 13 | |
| Volunteer | 0 | 8 | 8 | 8 | 8 | 8 | 9 | 9 | 10 | 11 | 12 | |
| Total | 20 | 28 | 28 | 28 | 29 | 27 | 27 | 28 | 29 | 23 | 25 | |
| Dental Hygienists | | | | | | | | | | | | |
| Board Ordered | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | |
| Volunteer | 0 | 1 | 1 | 1 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | |
| Total | 3 | 4 | 4 | 4 | 5 | 5 | 4 | 4 | 4 | 4 | 4 | |
| <u>Students & Assistants</u> | | | | | | | | | | | | |
| Dental Students | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Hygienist Students | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Dental Assistants | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 0 | |
| Total | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 0 | |
| Grand Total | 23 | 32 | 32 | 32 | 34 | 32 | 32 | 33 | 34 | 28 | 29 | |

Current Board Order Participants:

At this time there are 16 Board Ordered Dental Professionals in compliance. One dentist moved and has not signed a monitoring agreement; however, this individual is being drug tested.

Current Volunteer Participants:

There is one volunteer Dentist.

Program Status:

At this time the program is operating smoothly. There are a few dental professionals that resist going to treatment or would rather follow what their attorney tells them.

Activities:

The PRN held a Regional CE Program at the Texas Pharmacy Association’s Annual Meeting and Expo on July 6, 2004. There were seven dental professionals present.

Mr. Hull reported that he would be forwarding a letter to Ms. Sanders requesting consideration/approval of credit for PRN CE Courses, Regional Meetings and Bi-Annual PRN Seminars. The next PRN Seminar will last approximately 1 to 1 ½ hours for CE Credit and be held at the Hilton North Hotel on September 19, 2004.

Mr. Hull indicated that the next Regional Meeting will be held in October in the Woodlands and be on Relapse Prevention. This meeting will involve dentists and pharmacists in the Houston, Beaumont, Galveston, East Texas.

Dr. Strunk asked Mr. Hull if the Enforcement Division has been notified of the Board Ordered dentist who has moved and not signed a monitoring agreement.

Mr. Hull responded that he has notified the Enforcement Division and that he believes this matter is under control.

7. RULES.

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

Mr. Hill reported the following on the Adoption of Amendments to Chapter 103:

- Rule 103.1, repeals Rules 103.2, 103.4 and 103.5 and adopts new Rules 103.2, 103.3, 103.4 and 103.5, all of which concern dental hygienist licensure. The chapter's revisions primarily clarify and standardize language, and improve organization.
- Rule 103.1(b)(7), requiring that applicants have taken and passed a regional clinical examination, has been removed because it applied specifically to dental hygienist licensure by examination, and was not a "general qualification."
- Rule 103.1(c)(6) contains new language specifying that an entity designated by the Board may administer the jurisprudence examination.
- Rule 103.1(g) has been added to specify the regional examining boards designated as acceptable by the Board, and the effective dates of their acceptance.
- Rule 103.2, concerning dental hygienist licensure by credentials, is repealed. The language of this section has been included in new Rule 103.3.
- New Rule 103.2 specifically addresses dental hygienist licensure by examination. The language was taken from what is currently Rule 103.1, with revisions for clarity and organization.
- New Rule 103.3 addresses dental hygienist licensure by credentials. The language was taken from what is currently Rule 103.2, with revisions for clarity and organization.
- Rule 103.4, concerning staggered dental hygiene registrations, is repealed. The language of this section has been included in new Rule 103.5.
- New Rule 103.4 addresses temporary dental hygienist licensure by credentials. The language was taken from what is currently Rule 103.5, with revisions for clarity and organization.
- Rule 103.5, concerning temporary dental hygienist licensure by credentials, is repealed. The language of this section has been included in new Rule 103.4.
- New Rule 103.5 addresses staggered dental hygienist registrations. The language was taken from what is currently Rule 103.4, with revisions for clarity and organization.

A MOTION WAS MADE BY MS. ALLEN, AND SECONDED BY DR. MASON TO ADOPT AMENDMENTS TO CHAPTER 103 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

b. Discuss and Consider Adopting Amendments to Rule 108.25 – Dental Health Care Workers.

Mr. Hill reported the following on the Adoption of Amendments to Rule 108.25:

- 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.
- Two minor, non-substantive changes have been made to the amendment as it was originally published in the Texas Register. The first corrects the name of the Centers for Disease Control to “Centers for Disease Control and Prevention.” The second change adds the phrase, “or their successor agencies” to the end of subsection (e).

A MOTION WAS MADE BY DR. TIPPIT, AND SECONDED BY MS. JUBA TO ADOPT AMENDMENTS TO RULE 108.25 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

c. Discuss and Consider Adopting Amendments to Rule 104.1 - Requirements.

Mr. Hill reported that amendments to Rule 104.1 now require that dentists and dental hygienists take an additional three 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.

Mr. Hill stated that the rule should read, “Effective January 1, 2005, each licensee shall complete 3 hours of approved coursework in jurisprudence every 3 years, in addition to the general 12-hour requirement.”

A MOTION WAS MADE BY MR. WETHERBEE, AND SECONDED BY MS. JUBA TO ADOPT AMENDMENTS TO RULE 104.1 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

d. Discuss and Consider Adopting New Rule 114.11 – Exemption.

Mr. Hill reported that new Rule 114.11 clarifies the enactment of certain requirements imposed by Senate Bill 263, requiring that dental assistants that make x-rays be registered to do so. Specifically, the adopted Rule exempts from the registration requirement individuals who are only performing radiological procedures for training or educational purposes, under proper supervision. The exemption under this 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 WAS MADE BY DR. STUBBS, AND SECONDED BY DR. TIPPIT TO ADOPT AMENDMENTS TO RULE 114.11 (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

e. Discuss and Consider Adopting Amendments to Rule 107.101(c) – Guidelines for the Conduct of Investigation.

This Rule was Tabled by the Board and returned to the Enforcement Committee for further action.

f. Discuss and Consider Adopting Amendments to Rule 107.102(c) – Procedures in Conducting of Investigation.

This rule was Tabled by the Board and returned to the Enforcement Committee for further action in light of its connection to Rule 107.102(c).

g. Discuss and Consider Proposed Amendments to Rule 108.6 – Report of Patient Death or Injury Requiring Hospitalization.

This rule was Tabled by the Enforcement Committee for further action and was not addressed by the Board.

h. Discuss and Consider Proposed Amendments to Rule 102.1 – Fee Schedule.

Mr. Hill reported on the proposed repeal of Rule 102.1 and proposal of the new Rule 102.1. He stated that the new Rule 102.1 contains new language to enact certain fee requirements imposed by Senate Bills 1152 and 263.

- 102.1(a)(4)(A) reflects the addition of the statutorily required \$5 online fee for dental licensees, changing the annual dental registration renewal fee from \$111 to \$116.
- 102.1(b)(4)(A) reflects the addition of the statutorily required \$3 online fee for dental licensees, changing the annual dental registration renewal fee from \$66 to \$69.
- 102.1(c)(1) reflects the addition of fees for the new dental assistant registration program, in the amount of \$50 for the initial registration, and \$25 for the annual renewal.
- 102.1(c)(2) reflects a proposed reduction in the fees for a pit and fissure sealant certification, in order to help offset the cost to dental assistants who wish to hold both a dental assistant registration and a pit and fissure sealant certification. The initial registration fee has been reduced from \$50 to \$25, and the annual renewal fee has been reduced from \$50 to \$15.
- 102.1(d)(2)(B) reflects the addition of the statutorily required annual \$3.00 “e-pay” service fee for dental licensees.

A MOTION WAS MADE BY MS. JUBA, AND SECONDED BY MR. WETHERBEE TO PROPOSE AMENDMENTS TO RULE 102.1 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER FOR A 30-DAY COMMENT PERIOD. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

8. DIVISION REPORTS.

a. Licensing Division.

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

Dr. McDonald reported that 42 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 DR. STRUNK TO APPROVE 42 PARENTERAL ANESTHESIA PERMIT APPLICATIONS. (FOR – 13 / OPPOSED – 0) MOTION CARRIES

(2) Discuss and Consider Approval of General Anesthesia Permit Applications.

Dr. McDonald reported that one practitioner, Dr. Stephen Evans, has submitted an application for a General Anesthesia Permit. Dr. McDonald stated that further information is needed regarding the program offered through Solis Surgical Arts Center in Sherman Oaks California before a decision can be made regarding this application.

This application was Tabled pending further action by the Licensing Division.

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

Dr. McDonald reported that 194 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. STUBBS TO APPROVE 194 NITROUS OXIDE PERMIT APPLICATIONS. (FOR – 13 / OPPOSED – 0) MOTION CARRIES

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

Dr. McDonald reported that 145 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 145 ENTERAL CONSCIOUS SEDATION PERMIT APPLICATIONS. (FOR – 13 / OPPOSED – 0) MOTION CARRIES

(4) Licensing Division Third Quarter Report.

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

Ms. Allen asked Ms. Sanders if Dental Assistant statistics will be reported to the Board.

Ms. Sanders responded that she will be reporting the progress of pass/fail statistics as well as registration numbers of Dental Assistants.

b. ENFORCEMENT DIVISION REPORT.

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

Mr. Ablon reported on the Third Quarter of FY 2004 as well as Closed/Dismissed Cases for April 30, 2004 through July 30, 2004. He added that Board Members should be receiving the monthly Case Aging Reports via e-mail and if not, please let him know. Mr. Ablon stated that there are 302 on-going investigations within the Enforcement Division and that currently during the Fiscal Year 1,051 investigations have been completed. Mr. Ablon stated that the average time to complete an investigation is down to 150 days, based on the 1,051 cases recently completed.

(2) Approval of Task Force Consultants.

Mr. Ablon submitted the name of Dr. James L. Bolton, a retired General Dentist from Georgetown, Texas, to serve as a member of the Enforcement Task Force.

A MOTION WAS MADE BY DR. STRUNK, SECONDED BY DR. MASON TO APPROVE THE APPOINTMENT OF DR. JAMES L. BOLTON TO THE ENFORCEMENT TASK FORCE. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

c. ADMINISTRATIVE DIVISION REPORT.

(1) FY 2004 Budget.

Ms. McPherson reported that 8% of the fiscal year remains with 22% of the budget remaining. She noted that 38% of the Travel Budget remains unspent. Ms. McPherson asked that Board members please submit their expense reports as quickly as possible so they can be processed utilizing FY 04 funds. Ms. McPherson stated that on the comparison of expenditures to revenue collected, that Total Expenditures through July 31, 2004 were \$1,492,336 and total revenue collected was \$2,283,222. This is an excess of revenue over expenditures of \$790,887.

Ms. McPherson stated that the next report Board Members will be receive will be the Annual Financial Report to be completed in October. This report will be mailed to Board Members.

(2) LBB Third 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>3rd Quarter</u> | <u>YTD Performance</u> |
|---|--------------------|-------------------------------|------------------------|
| Measure on Complaints Resolved | 603 Resolved | 743 Resolved | Exceeded Target |
| Measure on Peer Assistance Program | 64 Participants | 7 New Participants | 41 Participants |
| Measure on Licenses Issued: Dentists | 420 | 111 | 199 |
| Measure on Licenses Renewed: Dentists | 11,479 | 3,201 | 8,871 |
| Measure on Licenses Issued: Dental Hygienists | 461 | 89 | 185 |
| Measure on Licenses Renewed: Dental Hygienists | 8,334 | 2,451 | 6,635 |
| Measure on Avg. Time for Complaint Resolution | 275 days | 485.9 days | 424.4 days |
| Measure on Avg. License Cost/Individual: Dentist | \$4.65 | \$4.44 | \$4.64 |
| Measure on Avg. License Cost/Facility (Dental Labs) | \$7.99 | \$7.84 | \$8.11 |
| Measure on Avg. License Cost/Individual: Dental Hygienist | \$3.35 | \$3.41 | \$3.47 |

Ms. McPherson stated that an Explanation of Variance was provided to the LBB with every measure and that Board Members will be presented with a summary of all 34 Measures and a Fourth Quarter Report at the November 2004 Board Meeting.

d. LEGAL DIVISION REPORT.

(1a) 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 Hearings (SOAH) action.

- SBDE 02-456-0307
- SBDE 01-142-1106
- SBDE 98-472-0602, 98-520-0625, 98-622-0810, 01-098-1011, 01-218-1206, 04-107-1010
- SBDE 03-502-0227, 04-543-0311
- SBDE 02-367-0211

Case Number SBDE 04-152-1031 will be voted on separately.

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY DR. MASON TO APPROVE THE AGREED SETTLEMENT ORDERS FROM SOAH. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

Mr. Houston presented for consideration before the Board SOAH Agreed Settlement Order SBDE 04-152-1031.

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY MS. ALLEN TO DIRECT STAFF, REGARDLESS OF OUTCOME, TO SEEK REVOCATION ON SOAH AGREED SETTLEMENT ORDER SBDE 04-152-1031. (FOR – 7 / OPPOSED – 6) MOTION CARRIES.

Dr. Tippit requested the Presiding Officer recognize, for the record, his vote “For” regarding this motion and matter.

Dr. Irons noted Dr. Tippit’s vote as “For” this motion and matter for the record.

(2) SOAH Settlement Orders and Proposals for Decision.

(a) Appearing before the Board is Jack E. Burroughs, DDS, SBDE No. 04-15-1030.

Mr. Houston stated that on May 5, 2004, the Board initiated formal disciplinary actions at SOAH with regard to Dr. Jack E. Burroughs. The allegations were that he pled ‘nolo contendere’ to 8 counts of Mail Fraud and was

sentenced to 18 months of imprisonment on August 21, 2002. Due to the situation of being imprisoned, and receiving a felony, the Board is statutorily mandated to revoke this license and it is not discretionary. Dr. Burroughs has been cooperative in terms of understanding that his license must be revoked but seeks the opportunity to request a reinstatement of his license before the Board. Mr. Houston added for clarification that under the current state of law, the license is considered to be revoked upon imprisonment. The action taken by the Board to approve the Order presented at this meeting would be to acknowledge the fact of imprisonment and necessary revocation.

Dr. Tippit requested to be recused from voting in this case.

A MOTION WAS MADE BY DR. MASON, SECONDED BY DR. MALIK TO APPROVE THE LICENSE REVOCATION OF DR. JACK E. BURROUGHS, SBDE NO. 04-150-1030. (FOR - 12 / OPPOSED – 0 / ABSTENTIONS - 1) MOTION CARRIES

Mr. Houston stated that Dr. Burroughs is appearing before the Board seeking reinstatement of his license and to address any issues the Board may have with regard with any facts and to allow him to explain the situation.

Mr. Jim McClendon, Attorney, representing Dr. Burroughs in this matter, introduced himself, Dr. Burroughs and his family to the Board.

Mr. McClendon provided the following statement in this matter:

“It is my extreme pleasure to represent Dr. Burroughs in his request to have his license reinstatement and appreciates the Board’s attention to this matter. Dr. Burroughs did have to have his license revoked under the statute because he was convicted of Mail Fraud in 2002. Dr. Burroughs served 18 months in prison from October 2002 until February of 2004.

The reasons that I think that compel the reinstatement of Burroughs’ license would be that he has completely cooperated in this process. Dr. Burroughs is very active in his church, he is one of the founding members, he’s had no problems with drugs, alcohol or sexual offenses. Mr. McClendon requested Dr. Burroughs undergo a psychiatric evaluation, this psychiatrist reports that Dr. Burroughs is perfect safe to practice dentistry. Dr. Burroughs is under probation as a part of his release and fulfilling all the terms including random drug screenings and urinalysis testing. There have never been any complaints about the quality of his dentistry, he’s stayed completely current with his CE. Dr. Burroughs has taken the Jurisprudence exam to be eligible for this reinstatement, he has taken it and received a 94 percent.”

Dr. Burroughs addressed the Board expressing his thanks for taking the time to review this and give him the time to say a few words. He provided the following statement: “I want you all to know that I am more sorry than I can express in words, the words don’t do this justice. I am extremely sorry that I have put myself, my family, people that know us, through all of this, taking up the Board’s time but I’ve learned a lot from it. Its been a terrible experience for all of us but the other side of that is that its been a blessing for us in some regards, beneficial in that my wife and kids have grown closer, we’re stronger as a family, our faith has grown. I’ve had the opportunity to read, I studied the Bible, I started a course in Naturopathy, which is a natural healing, natural medicine that will result in a degree, a Doctor of Naturopathy. So those are things I believe would not have occurred if I hadn’t gone through all this. I can promise the Board that my past behavior will not happen again. I agree with Dr. Tippit when he said, ‘Practicing is privilege’. I view it that way, more so than ever now, because I know what its like to not practice, and I won’t abuse that privilege and I’m asking the Board to give me another chance, to practice dentistry.”

Mr. Wetherbee asked what Staff’s position is on this case.

Mr. Houston responded that Staff has not taken a position; however, it does not oppose it. He further clarified that the criteria set forth by Mr. McClendon, on behalf of Dr. Burroughs, is to comply of Chapter 53 of the Dental Practice Act which is the same for all Occupations Agencies in that an individual loses their license because of a felony or any type

of conviction, it lays out the criteria that they need to meet in order to request that a Board reinstate that license. In the event that the Board decides to not reinstate this license, Dr. Burroughs would be entitled to a hearing at SOAH on the same issues dealing with the Chapter 53 criteria and that is what's addressed specifically in the summary that you have that's laid out.

A MOTION WAS MADE BY MS. JUBA, SECONDED BY MS. STINE TO ISSUE A LICENSE TO DR. JACK E. BURROUGHS. (FOR – 12 / OPPOSED – 0 / 1 - ABSTENSIONS) MOTION CARRIES.

(b) Respondent Janis Joy Frnka, DDS, SBDE Nos. 98-100-1017SC, 99-173-1216F, 02-631-0515DI, 03-267-1213, SOAH No. 504-04-2749.

Mr. Houston reported the following on this matter:

“Staff initiated formal disciplinary action against the Respondent at SOAH based upon multiple failures to perform dental restorations on patients in accordance with the Minimum Standard of Care, supporting the practice of dentistry without a license, practicing dentistry while her license expired, failure to keep and maintain dental records in accordance with the Minimum Standard of Care, failure to provide dental records to the TSBDE upon demand.

The Respondent, upon being properly noticed, did not appear at the hearing and a default judgment pursuant to Staff's motion.

This matter was before the Board at the April 2004 Meeting and Tabled to the August 2004 Meeting in order for the case to be sent to a Settlement Conference for consideration of an appropriate sanction; however, in this particular case, the Respondent did not show for the Settlement Conference.

Staff has brought the matter back to the Board for consideration again, and we support our original position that this license should be revoked.”

A MOTION WAS MADE BY DR. STRUBBS, SECONDED BY MS. STINE TO REVOKE THE LICENSE OF JANIS JOY FRNKA, DDS, LICENSE NUMBER 15968. (FOR – 13 / OPPOSED - 0) MOTION CARRIES

(c) Respondent Joyal Dwayne Lackey, DDS, SBDE Nos. 01-746-0823DF; 02-481-0318DF; 02-500-0327DF; 02-539-0416DF; 02-6010506DF; 02-678-0606DF; 02-715-0626DF; 02-798-0722JS; 03-167-1029, SOAH Docket No. 504-04-4709.

Mr. Houston reported the following on this matter:

“Staff initiated formal disciplinary action against the Respondent at SOAH based upon multiple failures to perform dental restorations on patients in accordance with the Minimum Standard of Care, multiple instances of abandoning patients, failure to provide dental records to the SBDE upon demand, and conviction of the felony offense of theft by check. The Respondent, although properly noticed, did not appear at the hearing and a default judgment pursuant to Staff's motion.

The sanctions being recommended by the ALJ is based upon Staff's formal complaint, the ALJ issued the corresponding Findings of Fact and Conclusions of Law and recommended the sanction of Revocation. Staff concurs with this recommendation to revoke and respectfully recommends the Board approve the Order that adopts this ALJ's PFD and revokes Texas Dental License 19181, held by Dr. Joyal Dwayne Lackey.”

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY DR. MCDONALD TO REVOKE THE LICENSE OF JOYAL DWAYNE LACKET, DDS, LICENSE NUMBER 19181. (FOR – 13 / OPPOSED - 0) MOTION CARRIES.

(d) Respondent Craig S. Hicks, DDS, SBDE No. 01-484-0410.

Mr. Houston stated the following on this case:

“Staff initiated formal disciplinary action against the Respondent at SOAH regarding the orthodontic treatment of a minor child. The Respondent, upon being properly noticed, did not appear at the hearing and a default judgment 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 ortho-dontic treatment, failed to obtain informed consent from the parents of the minor patient and failed to advise the parents of available treatment options. The Board Tabled this matter at the April 2004 Board Meeting in order to allow the matter to be sent to an Informal Settlement Conference (ISC) for consideration of a penalty sanction. The disciplinary action recommended by that panel was a reprimand, \$3,000 fine, 23 hours of CE and the Jurisprudence Exam.”

Dr. Irons announced that Drs. Tippit, Stubbs and Ms. Juba are recused from voting in this matter due to Settlement Conference participation.

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY MR. GARCIA TO REPRIMAND CRAIG S. HICKS, DDS, LICENSE NUMBER 16426. (FOR – 10 / OPPOSED – 0 / ABSTENSIONS - 3) MOTION CARRIES

(3) Proposed Board Orders (PBOs).

| | | |
|----------------------------|---------------|---------------|
| 04-096-1007 | 03-166-1029 | 03-175-1031 |
| 03-910-0723 | 04-060-0926 | 04-200-1114 |
| 03-631-0415 | 03-674-0430 | 02-702-0621 |
| 02-616-0509 | 02-851-0815 | 04-597-0329 |
| 03-907-0723 | 03-041-0916 | 00-530-0705 |
| 03-604-0407 | 99-515-0708 | 03-682-0502 |
| 03-187-1106 | 02-512-0404 | 03-055-0916 |
| 04-043-0923 | 03-290-1223 | 02-326-0124 |
| 04-233-1125 | 04-094-1007 | 04-032-0916 |
| 03-085-0927 | 03-552-0319 | 02-767-0717 |
| 98-512-0720 | 02-796-0722 | 04-037-0916 |
| 98-392-0420 | 03-699-0509 | 02-792-0722FJ |
| 03-355-0115 | 04-179-1110 | 04-269-1204 |
| 04-011-0904 | 03-070-0925 | 02-552-0419 |
| 03-290-1223 | 03-830-0624 | 04-018-0910 |
| 04-243-1125 | 04-287-1212 | 04-279-1210 |
| 03-948-0815 | 03-427-0304BA | 03-151-1021 |
| 02-200-1204CC; 03-405-0129 | | |

A MOTION WAS MADE BY MS. JUBA, SECONDED BY DR. TIPPIT TO ACCEPT PROPOSED BOARD ORDERS ABOVE. (FOR – 13 / OPPOSED - 0) MOTION CARRIES.

The Presiding Officer called for a recess at 12:20p.m. The Board resumed business at 1:45p.m. A roll call was conducted and it was noted for the record that a quorum was present.

Mr. Houston and the Legal Staff presented the Board with an in depth review on the cases listed below:

02-200-1204CC, 03-405-0129
 01-115-1023, 01-116-1023; 01-117-1023; 01-199-1129; 01-300-122
 03-637-0416

Case Number 02-200-1204CC, 03-405-0129

Mr. Houston stated that this was a first time offense and under the guidelines the maximum fine would be \$3,000 and the recordkeeping violations were attendant to the prescriptions not being documented.

Mr. Juba stated that she is satisfied with the explanation.

Case Number 01-115-1023; 01-116-1023, 01-117-1023, 01-199-1129, 01-300-122

Ms. Fritz stated, "This case was heard at a Settlement Conference in November 2002. Essentially it was a case where the party agreed to entered into the Board Order, it was lost in the mail. When the Respondent was contacted regarding the case being filed at SOAH, the Respondent asked where his signed Board Order was that it had been forwarded to the Board. Legal Staff redrafted the Board Order and it was returned immediately but it is the same recommendations from the Settlement Conference in November 2002."

Case Number 03-637-0416

Mr. Wetherbee asked what the conduct was that brought discredit upon the Respondent.

Mr. Nieto, Staff Attorney, stated that this case was originally referred to Settlement Conference and that the Respondent executed a sworn statement containing an admission of recent illegal drug use on his part.

Mr. Nieto further stated that the Responded had admitted engaging in recreational use of marijuana within 2003. The language was changed upon recommended of the panel at the Settlement Conference held in June 2004. The Proposed Board Order reflected the change of language

A MOTION WAS MADE BY MR. GARCIA, SECONDED BY DR. TIPPIT TO ACCEPT PROPOSED BOARD ORDERS 02-200-1204CC, 03-405-0129; 01-115-1023; 01-116-1023, 01-117-1023, 01-199-1129, 01-300-122; AND 03-637-0416. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

(4) Informal Settlement Conference Settlement Orders.

Ms. Kelley, Staff Attorney read the submitted Settlement Order 00-664-0823 from the **April 2001 ISC**, Panelists: Dr. Irons, and former Board Members Ms. Wilks and Mr. Lappin. Dr. Irons was recused from voting on this Order.

A MOTION MADE BY DR. STUBBS, SECONDED BY MS. ALLEN TO APPROVE SETTLEMENT ORDER 00-664-0823 FROM THE APRIL 2001 ISC. (FOR – 13 / OPPOSED - 0) MOTION CARRIES

Ms. Kelley read the submitted Settlement Order 01-046-0925 from the **August 2002 ISC**, Panelists: Dr. Malik and Ms. Juba and former Board Member Dr. Henry. Dr. Malik and Ms. Juba were recused from voting on this Order.

A MOTION WAS MADE BY DR. MCDONALD, SECONDED BY DR. TIPPIT TO APPROVE SETTLEMENT ORDER 01-046-0925 FROM THE AUGUST 2002 ISC. (FOR – 11 / OPPOSED – 0 / ABSTENTIONS - 2) MOTION CARRIES

Ms. Kelley read the submitted Settlement Order 00-461-0505 from the **March 2003 ISC**, Panelists: Dr. McDonald, Ms. Allen and Ms. Stine. Panelists were recused from voting on this Order.

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY DR. TIPPIT TO APPROVE SETTLEMENT ORDER 00-461-0505 FROM THE MARCH 2003 INFORMAL SETTLEMENT CONFERENCE. (FOR – 10 / OPPOSED – 0 / ABSTENTIONS - 3) MOTION CARRIES

Ms. Kelley read through the submitted Settlement Orders from the **October 2003 ISC**, Panelists: Dr. McDonald, Dr. Villarreal and Ms. Stine. Panelists were recused from voting on these Orders.

03-314-1231

01-479-0409DI, 03-484-0225

A MOTION WAS MADE BY MS. JUBA, SECONDED BY DR. STRUNK TO APPROVE SETTLEMENT ORDERS FROM THE OCTOBER 2003 ISC. (FOR – 10 / OPPOSED – 0 / ABSTENTIONS - 3) MOTION CARRIES.

Ms. Kelley read the submitted Settlement Order 02-854-0816 from the **March 2004 ISC**, Panelists: Dr. Stubbs, Dr. Mason and Ms. Morgan. Panelists were recused from voting on this Order.

A MOTION WAS MADE BY MS. JUBA, SECONDED BY MR. WETHERBEE TO APPROVE SETTLEMENT ORDER 02-854-0816 FROM THE MARCH ISC. (FOR – 10 / OPPOSED – 0 / ABSTENTIONS - 3) MOTION CARRIES

Ms. Kelley read the submitted Settlement Orders 02-894-0830, 03-512-0305, from the **June 2004 ISC**, Panelists: Dr. McDonald, Ms. Allen and Ms. Stine. Panelists were recused from voting on this Settlement Order.

Mr. Houston stated this case was brought before a Settlement Conference in August 2002 and those Board Members requested to be recused from voting in this matter are Dr. Malik and Ms. Juba. The June 2004 ISC affirmed the findings of the first panel.

A MOTION WAS MADE BY DR. STUBBS, SECONDED BY MR. WETHERBEE TO APPROVE THE SETTLEMENT ORDERS 02-894-0830, 03-512-0305 FROM THE JUNE 2004 ISC. (FOR – 8 / OPPOSED – 0 / ABSTENTIONS - 5) MOTION CARRIES.

Ms. Kelley read through the submitted Settlement Orders from the **June 2004 ISC**, Panelists: Dr. McDonald, Ms. Allen and Ms. Stine. Panelists were recused from voting on these Orders.

02-144-1112

02-588-0430

03-714-0513

02-324-0124

02-371-0211

03-028-0909

02-051-1001

02-807-0729

03-038-0916

02-165-1121DI

02-862-0820

01-309-0126ML, 01-078-0929

00-407-0412, 01-384-226, 02-398-0215

A MOTION WAS MADE BY DR. MASON, SECONDED BY MR. WETHERBEE TO APPROVE SETTLEMENT ORDERS AS REFLECTED ABOVE FROM THE JUNE 2004 ISC. (FOR – 10 / OPPOSED – 0 / ABSTENTIONS - 3) MOTION CARRIES.

Ms. Kelley read through the submitted Settlement Order 03-800-0613 from the **June 2004 ISC**, Panelists: Dr. McDonald, Ms. Allen and Ms. Stine. Panelists were recused from voting on this Settlement Orders.

Ms. Kelley stated that the proposed findings were that the Respondent failed to utilize a rubber dam during the Endodontic treatment of a patient, failed to keep and maintain patient dental records as required and failed to notify the Board of a change of address as required. The proposed sanctions are a Warning, \$1,000 fine, 12 hours of CE and the Jurisprudence Examination.

Dr. McDonald stated, “It strikes me that this is a controversial issue, practice standards that can, I think, can be argued that whatever is the prevailing practice in a given locale is the Standard of Care. It could also be argued that the experts will set the Standard of Care and that which a reasonable, prudent dentist would do under same, or similar of circumstances is the Standard of Care. So, I think that this might be an issue that perhaps we could consider, after some deliberation, and perhaps we can put together some type of subset of the Board as a Task Force to work with the Texas Dental Association and see if we can, in fact, develop some sort of consensus throughout the State.”

Ms. Kelley stated that Board Members can remove Case Number 03-800-0613 from your consideration when moving if you would like to do so.

Mr. Kelley continued on to read Case Numbers 02-165-1121 and Case Number 02-862-0820.

A MOTION WAS MADE BY DR. MASON, SECONDED BY MR. WETHERBEE TO APPROVE SETTLEMENT ORDERS AS READ BY THE LEGAL DIVISION STAFF, REMOVING OF CASE NUMBER 03-800-0613 (AT TAB 13) FOR CONSIDERATION. (MOTION WITHDRAWN)

Mr. Wetherbee asked for a review of Case Number 03-028-0909.

Mr. Nieto responded that this case involved an arrest of a dentist for possession of crack cocaine as well as crack pipes and other paraphernalia related to smoking crack. The Dentist was charged; however, he entered into a pre-trial diversion program, so the disposition of the case is that it has been disposed because he did comply with the terms of that pre-trial probation program.

A MOTION WAS MADE BY DR. MASON, SECONDED BY MR. WETHERBEE TO APPROVE SETTLEMENT ORDERS SUBMITTED FROM THE JUNE 2004 ISC, AS READ BY THE LEGAL DIVISION STAFF, REMOVING CASE NUMBER 03-800-0613 (AT TAB 13) (FOR – 13 / OPPOSED – 0)

Dr. Irons stated that he would like to entertain a discussion in reference to General Dentists who would like to be part of the Task Force to look into Standard of Care.

Dr. Malik asked if this discussion will be regarding Standard of Care for Endodontics or Standard of Care in general.

Dr. Irons responded, "If we're going to review Standard of Care, and what the role of the Board is, as an overview, and whether or not there is a role, I'm not sure, I think we should look at it in a big sense and see, do we have a role in establishing Standard of Care and given that, that I would like General Dentists..."

Mr. Garcia made a Point of Order and asked if the Board can discuss this matter since it is not on the Agenda.

Mr. Houston responded that the Board can make future plans to address this issue; however it cannot take action here today.

Dr. Irons would like people to submit to him, their name if they're interested in participating in such an endeavor.

Dr. McDonald stated that his remarks were addressed specifically, and limited to, the use of a rubber dam during an Endodontic procedure; this is a continuing problem and he thinks this Board needs to solve that problem so it can have a uniform policy that can be applied towards to our considerations.

Dr. McDonald asked Mr. Houston if the Board has the ability to strike #1 and accept the remainder of this Board Order.

Mr. Houston responded that any change of the Board Order at this point is going to be a change in the agreement, even if the Board is removing an allegation, the Respondent has signed off on what they believed was presented to them although there's nothing that would prevent us from sending it to them and having it reprocessed and brought back to the Board without that allegation, if the Board, or panel, wishes to remove that allegation.

Mr. Wetherbee asked if can the Board sort out the question of Standard of Care soon enough, or should it amend the Board Order.

Mr. Houston responded that it won't be much of a sell because you're taking it out.

Ms. Stine interjected that the Respondent has already signed it.

Ms. Allen pointed out that the paragraph can't be removed without a majority of the panel, and we don't have that, so it's a moot point. She further added, for the record, that this particular case was based on what a reasonable and prudent dentist would do in similar, or same, circumstances; that is what we defined as Standard of Care.

Mr. Garcia stated, "In light of Tabling this case, let's give the Legal Division an opportunity to figure out the best course of action. It appears to me this is going to take time to sort out this rubber dam issue and maybe the Board can revisit this matter at the November Board Meeting."

DR. IRONS ANNOUNCED THAT CASE NUMBER 03-800-0613 IS TABLED.

Mr. Nieto read through the submitted Settlement Orders from the **July 2004 ISC**, Panelists: Dr. Tippit, Dr. Stubbs and Ms. Juba. Panelists were recused from voting on these Settlement Orders.

| | | |
|-------------|-------------|--------------------------|
| 02-686-0606 | 03-115-1009 | 03-238-1202 |
| 02-328-0125 | 02-501-0329 | 03-520-0305, 03-562-0324 |

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY DR. MCDONALD TO APPROVE SETTLEMENT ORDERS FROM THE JULY 2004 ISC. (FOR – 10 / OPPOSED – 0 / ABSTENTION - 3) MOTION CARRIES.

Ms. Kelley read through the submitted Settlement Order 02-655-0503FJ from the **May 2004 Staff Settlement Conference (SSC)**. Panelist: Dr. Mason. Dr. Mason was recused from voting on this Order.

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY DR. STRUNK TO APPROVE SETTLEMENT ORDER 02-655-0503FJ. (FOR – 12 / OPPOSED – 0 / ABSTENTION - 1) MOTION CARRIES.

Mr. Nieto read through the submitted Settlement Orders from the **July 2004 SSC**. Panelist: Dr. Stubbs. Dr. Stubbs was recused from voting on these Orders.

| | |
|---------------------------------------|-------------|
| 02-555-0429, 03-858-0730, 03-881-0711 | 02-651-0523 |
|---------------------------------------|-------------|

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY DR. MCDONALD TO APPROVE THE SETTLEMENT ORDERS FROM THE JULY 2004 SSC. (FOR – 12 / OPPOSED – 0 / ABSTENTION - 1) MOTION CARRIES.

(5) Legal Division Report.

Mr. Houston submitted the information and statistics listed below as part of his Third Quarter Report.

Informal Settlement Conferences

- 4 ISC Conducted (2 ISCs and 2 Staff ISCs)
- 94 Cases (64 Respondents)
- 52 Board Orders Proposed at Settlement Conferences
- 29 Cases Dismissed at Settlement Conferences
- 11 Cases Tabled for Future Consideration/Further Action
- 1 Case Referred to SOAH

Initial Proposed Board Orders (PBOs) (Since the April 16, 2004 Board Meeting)

- 69 PBOs Dispatched
- 52 PBOs Received

Legal Case Closures (Since the April 16, 2004 Board Meeting)

- 89 Cases

SOAH Actions (Since the April 16, 2004 Board Meeting)

- 47 Total Cases Currently Filed and Under Prosecution at SOAH
 - 24 Cases Under Board Consideration at the August 27, 2004 Board Meeting
 - 23 Cases Remaining
 - 16 Cases in the Discovery Phase – (7 cases in Initial Discovery)
 - 3 Cases in Post-Hearing
 - 1 Case remanded pending further action
 - 1 PFD (9 Cases Issued)
 - 2 PFDs (5 Cases) Heard and were returned for Final Board Consideration
- 27 Cases Awaiting Final Consideration
 - 14 PFD Cases (Defaults)
 - 13 Settled Cases

Other Legal Issues

- 120 Board Order Cases Projected to be Resolved at the August 27, 2004 Board Meeting
- 288 Board Order Cases Projected for Resolution in FY 04
 - Comparison History:
 - FY 03 – 106 Board Orders
 - FY 02 – 98 Board Orders
- 555 Cases are in the Legal Division as of August 27, 2004

Future Activity

- Informal Settlement Conferences – October 7-8, 2004.
- Finalizing Scheduling of Staff Settlement Conferences for 2004.

Dr. Tippit complimented the Legal Division, stating the total Board Orders processed in the Legal Division in 2001 totaled 32, thus increasing Board Orders by a factor of 10.

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

Mr. Garcia asked the Board to look at one figure, the 88 cases filed at SOAH is a remarkable figure for this Agency. More cases are going to SOAH, more cases are getting resolved at SOAH and more cases are resolving because of SOAH. Right now the Legal Division has 1/3 of their docket which is the SOAH backlog and if they keep going in the direction their headed I think they're really going to make some headway against that backlog.

Dr. Irons commended Mr. Garcia for his input into Legal and what he's doing to help work with the Legal Division so we're all communicating on the same page.

13. EXECUTIVE SESSION.

The Board conducted a closed meeting to receive legal advice, discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific board employees pursuant to Sections 555.071 and 551.074, the Texas Open Meetings Act, codified as Chapter 551 of the Government Code.

14. EXECUTIVE DIRECTOR'S REPORT.

Mr. Schmidt gave a report on the issues being addressed with the Legislature, the Legislative Budget Board, the Governor's Office of Budget, Planning and Policy, the House Committee on Appropriations and the Senate Finance Committee.

Mr. Schmidt stated that the January 2004 Legislative Committee laid the template for addressing the Legislative offices as the message of parity of compensation is carried forward. The emphasis being made to the Legislative Staffs is that the team at this Agency deserves parity of compensation with employees of other state agencies who have the same

authority and/or job responsibilities. The justification for parity lies in the accomplishments of this Agency since 2002. The June 2002 recommendations from the Sunset Advisory Committee and the State Auditor have been addressed. The Agency is operating more efficiently and effectively.

Mr. Schmidt reported that he and Dr. Irons visited approximately 30 Legislative offices on Thursday, August 19, 2004. The goal of these visits was to deliver the position paper on Compensation of Parity, communicate the past year's turnover rate and discuss the Agency's accomplishments over the period of 2002-2004. Additionally, the issue of recruiting and retaining staff was addressed.

Mr. Schmidt stated that he and Dr. Irons attended at a joint hearing to the Legislative Budget Board and the Governor's Office of Budget, Policy, and Planning delivered an Agency briefing on Tuesday, August 24, 2004. This hearing addressed the Legislative Appropriation Request and the Exceptional Items being asked for. The Director of Administration and Finance also attended this meeting. A presentation was also given to the House Committee on Appropriation's Subcommittee on Regulatory Issues on Wednesday, August 25, 2004. Mr. Schmidt reported on the Board's Mission, FY 2004 accomplishments and the Parity of Compensation Issue. Dr. Irons was also in attendance. A third hearing to address the Senate Finance Committee has been scheduled for Monday, August 13, 2004, which he and Dr. McDonald will attend. Mr. Schmidt stated that he and Dr. Irons will be conducting new, and follow-up, visits to Legislative offices during the months of September and October 2004.

The purpose of these visits will be to gain support for the Compensation of Parity. We will schedule meetings with the Chair of all major committees in the Senate and House of Representatives.

Mr. Schmidt added that appropriate and fair compensation is a critical issue to the Texas State Board of Dental Examiners and its employees. In order for this Agency to carry out its primary mission of protecting the public, it is essential to maintain and support a team that possesses the necessary experience and expertise to handle complex issues in the dental field. It is crucial that funding be approved to allow for the recruitment and retention of professional personnel. Qualified and knowledgeable employees provide valuable service and protection to the public.

In closing, Mr. Schmidt stated that protection of the public, customer service, efficiency and effectiveness, accountability and responsibility are all critical issues that this Agency is mandated to accomplish. We must have the financial resources available to recruit and retain a qualified and knowledgeable team in order to fulfill these directives. However, we must be able to compete on a level playing field with other state agencies, as well as outside forces. Comparable and fair compensation is an essential factor if we are to accomplish parity.

Mr. Schmidt offered Board Members copies of information provided to Legislators and documentation showing the memberships of the Legislative Budget Board, Sunset Advisory Commission, House Appropriations, Senate Finance, Public Health Committee, Senate Government Organization, Senate and the Health and Human Services. These are the committees that the Agency normally appears before during the Legislative Session.

Mr. Schmidt asked Board Members to complete the Omni Hotel Credit Card Authorization Form and return it in to Ms. Shoesmith. He also thanked Board Members and Staff for submitting articles for the Newsletter and indicated that the next deadline for articles is October 31, 2004.

15. PRESIDING OFFICER'S REPORT.

Dr. Irons thanked everyone for their patience in his indoctrination into this role as Presiding Officer.

16. PUBLIC COMMENTS.

Dr. Tippit thanked Ms. Juba for serving as the Legislative Committee Chairperson.

17. ANNOUNCEMENTS.

Dr. Irons announced that the next Board Meeting is November 19, 2004 and Informal Settlement Conferences will be held on October 7-8, 2004.

18. ADJOURN. A MOTION BY MS. MORGAN, SECONDED BY DR. MASON TO ADJOURN THE MEETING AT 4:16 P.M. (FOR – 13 / OPPOSED – 0) MOTION CARRIES.

- SIGNED -

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

Date: August 27, 2004

- SIGNED -

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

Date: August 27, 2004