

**BOARD OF DENTISTRY
GENERAL BUSINESS MEETING MINUTES
FEBRUARY 18, 2011
RESIDENCE INN BY MARRIOTT
600 WEST GAINES STREET
TALLAHASSEE, FL 32304
(850) 329-9080
7:30 A.M.**

CALL TO ORDER

The meeting was called to order at 7:30 a.m. by Dr. Morgan, Chair. Those present for all or part of the meeting included the following:

Members present:

Thad Morgan, D.M.D., Chair
Carl Melzer, D.D.S.
Wade Winker, D.D.S.
Daniel Gesek, D.M.D.
William Kochenour, D.D.S.
Tammy Baker, R.D.H.
Debra Edinger, R.D.H.
Vicki Campbell
Carol Stevens, D.D.S.

Members absent:

Robert Perdomo, III, D.M.D., Vice-Chair
Elmira Gainey

Staff present:

Michael Flury, Board Counsel
Sue Foster, Executive Director
Wayne Mitchell, Esq., Prosecutor
Patricia Smith, Esq., Prosecutor
George Black, Esq., Prosecutor
Jeff Peters, Esq., Prosecutor
Cindy Ritter, Program Administrator
Court Reporting, Accurate Stenotype
Reporters, Inc. 850-878-2221

REVIEW OF MINUTES

The minutes of the December 3, 2010 meeting were reviewed and following review, the following action was taken by the Board:

Motion: by Dr. Kochenour to approve as presented

Second: by Dr. Winker

Vote: unanimous

REPORTS

Board Counsel

Mr. Flury reviewed the Governor's Executive Order regarding rule-making and gave the Board a summary of rule-making changes.

Rules Report for January, 2011

Mr. Flury provided a copy of the rules report in advance of the meeting for members' review.

Executive Order from Governor Scott

All pending rules and future rule drafts will need to go through the Governor's Office of Accountability and Regulatory Reform. A rules review is mandated by this order, rules to be reviewed, and questions answered by April 1, 2011. Mr. Flury stated that he will work with board staff and Dr. Morgan or his designee to conduct the review.

Summary re Rulemaking Changes

Letter to JAPC regarding 64B5-16.006, FAC

Mr. Flury advised that legislation may be proposed to make the rule change unnecessary. If the legislation does not pass, then the rule language could be re-noticed.

Motion: by Dr. Melzer to withdraw the proposed language for 64B5-16.006 with the caveat that the language will be re-noticed if legislation does not pass this session.

Second: by Dr. Winker

Vote: unanimous

Dr. Melzer asked if critical rules could be given more importance in the rulemaking process. Mr. Flury advised that this could be noted in order to bring attention to the urgency of these rules.

Council on Dental Hygiene (Ms. Baker)

Minutes from July 27, 2010 Conference Call

Excerpt from September 2010 Board Minutes

Ms. Baker asked that this be continued to the May meeting when all board members would be present.

Council on Dental Assisting (Dr. Stevens)

Minutes from December 14, 2010 Conference Call

Dr. Stevens reviewed the items discussed at the conference call with Board members. These included standards for expanded duties permit approvals, on the job training requirements for a dental assistant – 6 months was recommended before enrollment in an expanded duty course; a recommendation that expanded function courses limit the student/teacher ratio of 1 instructor/10 students; recommendation that the board establish qualifications for instructors – they must be dentists or dental hygienists with a minimum of one year experience as an expanded function dental assistant or expanded function dental assistants with a minimum of 5 years experience. It was also recommended that laws and rules should be tested in expanded duties courses.

Following discussion of the minutes, Dr. Stevens asked that the committee actions be referred to the Rules Committee.

Motion: by Dr. Stevens to approve the minutes

Second: by Dr. Kochenour

Vote: unanimous

Dr. Erbs stated that the FDA House of Delegates supports proposing legislation to require annual recertification process in which board approved programs maintain standards for initial approval.

Expanded functions courses - Dr. Stevens asked that the proposed language be referred to the Rules Committee for review prior to the May meeting.

Dr. Stevens asked the Rules Committee to clarify on the job training should be hands on training in a dental office. Prior to a dental assistant going to an expanded duty course they should have already performed the tasks.

Board Director

Ratification of Lists

Motion: by Ms. Baker to ratify the list of approved anesthesia/sedation permits

Second: by Dr. Winker

Vote: unanimous

Ms. Foster briefly discussed the current House and Senate bills before the legislature and asked the Board whether they wished to vote to support, be neutral or oppose them. Following discussion, the following action was taken by the Board:

HB 367 and SB 546 dealing with health care provider contracts and prohibiting contracts between health maintenance organizations and dentists from containing certain fee requirements:

Motion: by Dr. Kochenour to support these bills
Second: by Dr. Winker
Vote: unanimous

HB 485 and SB 314 dealing with public records and the dental workforce survey, providing an exemption from public records requirements:

Motion: by Dr. Kochenour to support these bills
Second: by Dr. Winker
Vote: unanimous

HB 225 and SB 446 dealing with revisions to the scope and areas of practice for dental hygienist

Motion: by Dr. Kochenour to support these bills
Second: by Dr. Winker
Vote: unanimous

SB 312 and HB 483 dealing with the dental workforce survey at time of license renewal

Motion: by Dr. Kochenour to support these bills
Second: by Dr. Winker
Vote: unanimous

Chair

The board voted at the December 3 meeting to move to the ADEX exams for dental and dental hygiene if the exam did not have to be bid. There were questions as to whether the dental and dental hygiene exams must be sent out for bid. The Florida Dental Association (FDA) will be proposing legislation to allow the board to use the ADEX exam.

Motion: by Dr. Gesek that the FDA lobby for the statute change
Second: by Dr. Kochenour
Vote: unanimous

Dr. Nissan, President of the FDA, appeared before the board and stated that he had addressed the House of Delegates and Board of Trustees on 12/4/2011 regarding the examination issue. He stated that he had also met with Senator Hays and Representative Costello regarding adding amendments concerning the examination.

He discussed the following: # of patients – 2 restorative patients
If exam is determined to be the same, move forward to join ADEX as a full member
Establish a one year time period for applicants from other states to become licensed; time date moving forward, and would not establish reciprocity
Residency requirement, must establish practice within 12 months.
The FDA is writing legislation that should be submitted next week to be included on another bill going forward.

Dr. Winker advised the board that he plans to address the examiners at the next exam about questions posed to patients regarding candidates and whether the examiners are familiarizing themselves as to whether a candidate is a retake candidate.

Ms. Jackie Burt McDonough advised the board that it would be helpful if legislation could be added to allow educators to become examiners.

Dr. Don Erbes presented the board members with draft rule language to allow dental assistants and hygienists to place, carve and polish restorations. The language will be referred to the appropriate committees.

Dr. Morgan discussed creating a committee for elder care, special needs and pedodontists. Dr. Melzer agreed to Chair this Committee.

F. Vice Chair

None

G. Board Members

Ms. Campbell presented Ms. Anne Papadelias, Project Manager of the Escambia County Dental Cooperative with a proclamation from the Escambia County Commission honoring her with a plaque for her work with the indigent and under-served in Santa Rosa and Escambia counties.

TOPIC DISCUSSION (none)

FOR YOUR INFORMATION

Letter from CITA Clarifying Acceptance of CITA Examination

Press Release 1/7/2011 re Fluoride

Questions & Answers re Fluoride

HB 115 An Act Relating to Creation of Dept. of Health and Human Services

SB 312 An Act Relating to the Practice of Dentistry

SB 314 An Act Relating to Public Records

SB 334 An Act Relating to Controlled Substances

SB 446 An Act Relating to Dentistry and Dental Hygiene

Letter from Florida Dental Association dated December 13, 2010

Email re Rule Change – Ketamine

Dr. Morgan stated that the Florida Academy of Pedodontists indicated they were not aware of the proposed change to restrict ketamine. Two members of this community have been added as advisors to the Anesthesia Committee.

2011 AADB Mid-Year Meeting

Memo to State Boards

Preliminary Agenda

November 2010 Dental and Dental Hygiene Examinations

Examination Update Memo from Michael Curtis

Dental Examination – Examiner, Proctor and Candidate Survey

Dental Hygiene Examination - Examiner, Proctor and Candidate Survey - Palm Beach and Miami Dade exam sites

Email from Michael Curtis re ADEX Information

Central Regional Dental Testing Service Inc.

Rhonda Hopkins, R.D.H. request for licensure by credentials

DISCIPLINARY PROCEEDINGS

Satnam Bedi, DMD, Case No. 2009-20853, Settlement

(Gesek, Stevens)

Dr. Bedi was present and was represented by Robert Morvay, Esq. A two count administrative complaint filed December 20, 2010 alleged violations of s. 466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment involving failure to record caries/pathology, existing condition of patient's teeth; and s. 466.028(1)(x), F.S. of failure to meet minimum standards involving performing surgical procedure on patient when blood pressure was 230/111 and having a single indemnity in excess of \$25,000 (\$920,000 paid) Respondent proceeded with surgical extraction of teeth numbers 17 and 19. Patient suffered a stroke and was transported to the hospital where he was stabilized prior to being transported to another hospital.

Probable Cause Panel recommendation:

reprimand, \$10,000 fine, costs, Level I in oral medicine, Level I in record keeping, level 1 in risk management, 3 hour ethics course within 6 months, refund to patient, laws and rules exam within 12 months, CE audit for one biennium.

A settlement agreement was presented to the board with the following terms: reprimand, fine of \$8500 payable within 12 months, costs of \$2640.06 payable within 12 months; level 1 in oral medicine with verified competency at dental school, level 1 in record keeping, level 1 in risk management, 3 hours of ethics within 12 months, patient has been refunded through civil claim, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Dr. Melzer to accept the settlement agreement

Second: by Dr. Kochenour

Vote: unanimous

**Paul L. Caputo, D.D.S., Case No. 2009-18662, Settlement
(Gesek, Kochenour)**

Dr. Caputo was present and was represented by Jon Pellett, Esq. A two count administrative complaint filed October 18, 2010 alleged violations of s. 466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment involving failure to record comprehensive dental exam, documentation of clinical findings, periodontal examination, medical history, diagnosis, pathology, panorex radiograph, and s. 466.028(1)(x), F.S. of failure to meet minimum standards involving prescribing medication prior to reviewing medical history or contraindications; no diagnosis to support course of treatment; failure to perform comprehensive exam.

Probable Cause Panel recommendation:

reprimand, \$10,000 fine, costs, Level I in implant dentistry and level I in record keeping within 6 months, refund to patient, laws and rules exam within 12 months, one biennium CE audit

A settlement agreement was presented to the board with the following terms: letter of concern, fine of \$8000 payable within 12 months, costs of \$3706.78 payable within 12 months; level 1 diagnosis and treatment planning with verified competency at dental school and level 1 in record keeping within 12 months, proof of refund to patient was included in investigative file, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months. A course has been completed in recordkeeping.

Following review, the following action was taken by the board:

Motion: by Dr. Melzer to accept the settlement agreement and accept the recordkeeping course already completed toward the requirement
Second: by Dr. Winker
Vote: unanimous

Candace Colella, DMD; Case No. 2007-20872, Settlement (Melzer, Morgan)

Respondent's attorney requested a continuance in the case as he was involved in a trial.

Victor J. Grasso, DDS, Case No. 2009-17728, Settlement (Gesek, Stevens)

Dr. Grasso was present and was not represented. An administrative complaint filed August 9, 2010 alleged violations of s. 466.028(1)(x), F.S. of failure to meet minimum standards involving seating an abutment and crown on an implant that was painful and mobile, and failure to refer back to periodontist who placed the implant.

Probable Cause Panel recommendation:
reprimand, \$5,000 fine, costs, Level I in implant prosthetics, refund to patient, laws and rules exam within 12 months, one biennium CE audit

A settlement agreement was presented to the board with the following terms: fine of \$4000 payable within 6 months, costs of \$3,961.89 payable within 6 months; level 1 in implant prosthetics with verified competency at dental school within 6 months, refund to patient, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Dr. Winker to reject the settlement agreement
Second: by Dr. Stevens
Vote: motion passes with Dr. Melzer opposed

Motion: by Dr. Kochenour to offer a counter settlement agreement to include original terms and a letter of concern
Second: by Ms. Edinger
Vote: motion passes

Dr. Grasso accepted the counter settlement agreement.

Daniel E. Kelly, DDS, Case No. 2007-09580, Settlement (Melzer, Gesek, & Stevens)

This case was presented at the September 17, 2010 Board meeting.

Dr. Kelly was present and was represented by Barry Witlin, Esq. A two count administrative complaint filed October 3, 2007 alleged violations of s. 466.028(1)(c), F.S. of being convicted or found guilty or entering a plea of nolo contendere relating to arrest on December 6, 2000 for Medicaid fraud, cash for patients scheme that paid recruiters for providing Medicaid eligible children to dental office; respondent pled nolo contendere to 1 count of racketeering; sentenced to 4 years probation, pay restitution and perform 300 hours of community service. S. 466.028(1)(II), F.S., as respondent failed to notify Board of plea within thirty days.

Probable Cause Panel recommendation:
Revocation

A settlement agreement was presented at the April 9, 2010 Board meeting with the following terms: appearance by respondent and/or counsel, reprimand, fine of \$7500 payable within 2 years, costs of \$2,453.51 payable within 2 years; 6-9 hours in risk management and 3 hour ethics course within 12 months ; suspension for 18 months, however, suspension stayed with probation for 2 years with monitor, random audit of 10% of billing records for prior 6 months, semi-annual reports, proof restitution has been paid to ACHA, proof that all requirements of plea agreement and probation have been met; pass the laws and rules exam within 12 months.

Following review, the Board voted to offer counter settlement agreement of revocation.

An amended settlement agreement response to board's counter-offer was presented to the board on September 17, 2010 with the following terms: appearance by respondent and/or counsel, reprimand, fine of \$7500 payable within 2 years, costs of \$3,153.61, payable within 2 years; 6-9 hours in risk management and 3 hour ethics course within 12 months ; suspension for 18 months, however, suspension stayed with probation for 2 years with monitor, random audit of 10% of billing records for prior 6 months, semi-annual reports, proof that all requirements of plea agreement and probation have been met; 50 hours of community service within 12 months, pass the laws and rules exam within 12 months.

Following review, the Board voted to offer counter settlement agreement of revocation.

The case was presented for re-consideration at the December 17, 2010, Probable Cause Panel meeting due to the fact that a settlement agreement with the identical terms (case number 2007-09578) was accepted as presented at the January 15, 2010, Board meeting for a case with the same allegations. Additionally, the terms of the proposed settlement agreement were consistent with discipline imposed in at least three other cases resulting from the same criminal investigation. This causes a problem due to the current case not being given fair and equal treatment.

Probable Cause Recommendation (12/17/10):

Terms identical to those in case number 2007-09578 to include reprimand, \$7,500 fine, costs, 2 years probation with auditing of billing records by Board approved monitor, 18 months stayed suspension, probation for 2 years with monitor, costs, random audit of 10% of billing records for prior 6 months for documentation and billing accuracy, monitor shall file semi-annual reports, proof that requirement of plea agreement and probation have been satisfied, 6-9 hours in risk management and 3 hour ethics course within 12 months, laws & rules exam within 12 months

A Motion for Board's Final Order by Acceptance of Second Response to Board's Counter-Offer

An amended settlement agreement was offered to the Board with the following terms: respondent and counsel appeared at 9/17/10 meeting; therefore, re-appearance is waived, reprimand, fine of \$7500 payable within 2 years of filing of final order, costs of \$3153.61, payable within 2 years, 6-9 hours in risk management, 3 hour ethics within 12 months, suspension for 18 months – stayed, probation for 2 years with monitor, costs, random audit of 10% of billing records for prior 6 months for documentation and billing accuracy, monitor shall file semi-annual reports, proof that requirement of plea agreement and probation have been satisfied, pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Dr. Morgan to accept the settlement agreement
Second: by Ms. Baker
Vote: motion passes with Dr. Winker and Ms. Campbell opposed

Kenneth M. Lutsch, D.D.S., Case No. 2010-02028, Settlement (Gesek)

This case was presented at the September 17, 2010 meeting.

Dr. Lutsch was not present and was not represented. An administrative complaint filed June 7, 2010 alleged violations of s. 466.028(1)(b), F.S. of having a license to practice dentistry acted upon by another state involving misuse/inhaling of nitrous oxide prior to performing dental procedures and permitting a dental assistant to perform coronal polishing without the appropriate certificate. He was issued a 90 day suspension, \$1000 fine and obligations placed including indefinite probation on Illinois dental license.

Probable Cause Panel recommendation:

Letter of concern, \$500 fine, costs, probation to run concurrent with Illinois Consent Order, appearance prior to practicing dentistry in Florida, laws and rules exam within 12 months, one biennium CE audit

A settlement agreement was presented to the board on September 17, 2010, with the following terms: appearance waived, letter of concern, fine of \$500 payable within 6 months, costs of \$427.12 payable within 6 months; appearance before board prior to practicing dentistry in Florida and demonstrate safe to practice, probation to run concurrent with Illinois consent order, CE courses may be audited for next biennium, pass laws and rules exam prior to practice in Florida.

Following review, the following action was taken by the board:

Motion: by Dr. Perdomo to reject the settlement
Second: by Ms. Gainey
Vote: unanimous

Motion: by Dr. Perdomo to offer counter settlement agreement with the following terms: letter of concern, fine of \$500 payable within 6 months, costs of \$427.12 payable within 6 months; suspension of license until appearance before board, mandatory PRN evaluation, probation to run concurrent with Illinois consent order, 3 hour ethics course, CE courses may be audited for next biennium, pass laws and rules exam prior to practice in Florida.

Second: Ms. Gainey
Vote: unanimous

The response to Board's Counter-offer: Amended Settlement agreement was presented to the Board with the following terms:

Appearance waived, letter of concern, fine of \$500 payable within 6 months, costs of \$879.00 payable within 6 months, execution of a voluntary withdrawal from practice agreement and appearance before Board with the approval of PRN prior to practice in Florida, demonstration of safety to practice, Florida license placed on probation concurrent with Illinois consent order, CE courses may be audited for next biennium and pass the laws and rules exam prior to practice in Florida.

Following review, the following action was taken by the board:

Motion: by Dr. Melzer to accept the settlement agreement
Second: by Ms. Baker
Vote: unanimous

Gaurangi N. Patel, D.D.S., Case No. 2009-15837, Settlement

(Gesek, Kochenour)

Dr. Patel was present and was represented by Juan Carlos Garcia, Esq. An amended two count administrative complaint filed October 18, 2010 alleged violations of s. 466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment involving records added at a later date, modification of consent form, failure to document any surgical extractions or other attempts to retrieve remaining roots of tooth number 18, failure to document radiographic evaluation of remaining tooth structure of tooth number 18, failure to document follow-up, no adequate diagnostic radiographs, s. 466.028(1)(x), F.S. of failure to meet minimum standards involving failure to remove remaining roots, failure to take and/or retain diagnostic radiographs, failure to advise of post-extraction complication and failure to provide adequate post operative instructions.

Probable Cause Panel recommendation:

reprimand, \$10,000 fine, costs, Level I in Diagnosis and Treatment Planning, Level I in oral surgery, Level I in record keeping and Level I in risk management within 6 months, refund to patient, laws and rules exam within 12 months, one biennium CE audit

A settlement agreement was presented to the board with the following terms: reprimand, fine of \$10,000 payable within 12 months, costs of \$3755.70 payable within 12 months; level 1 in diagnosis and treatment planning, level I in oral surgery with verified competency at dental school, level 1 in risk management, level 1 in record keeping within 12 months, refund to patient, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Dr. Winker to reject the settlement agreement
Second: by Dr. Stevens
Vote: unanimous

Motion: by Dr. Winker to offer a counter settlement with the addition of an ethics course
Second: by Dr. Melzer
Vote: unanimous

Dr. Patel accepted the counter offer.

Javier Sanchez-Rivera, D.D.S., Case No. 2007-29717, Settlement (Melzer & Perdomo)

Dr. Sanchez-Rivera was not present and was represented by Lawrence Burkhalter, Esq. A two count administrative complaint filed February 12, 2010 alleged violations of s. 466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment involving failure to record the periapical radiolucency on radiograph, failing to document pain in tooth #2, s. 466.028(1)(x), F.S. of failure to meet minimum standards involving failure to diagnose or perform testing to aid in diagnosis or cause of the swelling, failing to employ any diagnostic tests to determine source of pain, failure to treat or recommend treatment,

Probable Cause Panel recommendation:

reprimand, \$10,000 fine, costs, Level I in endodontics, Level II in Diagnosis and Treatment Planning, Level I in record keeping and ethics course within 6 months, refund to patient, laws and rules exam within 12 months, one biennium CE audit

A settlement agreement was presented to the board with the following terms: Count I 466.028(1)(m), F.S. is subsumed within Ct II charging only a violation of 466.028(1)(x), F.S.,

reprimand, fine of \$3500 payable within 18 months, costs of \$4,845.02 payable within 18 months; level 1 in endodontics, level II in diagnosis and treatment planning, 3 hour college level ethics course within 12 months, patient has been refunded through civil claim, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Dr. Winker to accept the settlement agreement
Second: by Ms. Baker
Vote: unanimous

Thomas Schopler, DDS; Case no. 2007-29456, Settlement (Melzer, Gesek, Kochenour)

The following is an excerpt from the December 3, 2010 meeting:

Dr. Schopler was present and was represented by Francis Deluca, Esq. A three count administrative complaint filed July 28, 2008 alleged violations of s. 466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment involving failure to keep records to justify root canal therapy on tooth #14; s. 466.028(1)(n), F.S. failure to provide patient records to department; s. 466.028(1)(ff) office practice below minimum standards by failure to maintain original or duplicate of patient records.

Probable Cause Panel recommendation:

reprimand, \$15,000 fine, costs, Level I in record keeping, 3 hour ethics course within 6 months, laws and rules exam within 12 months, one biennium CE audit

A settlement agreement was presented to the board with the following terms: Count III is dismissed, Count II is subsumed into Count I, letter of concern, fine of \$2000 payable within 6 months, costs of \$4,039.73 payable within 6 months; level 1 in record keeping with verified competency at dental school or Board approved course provider, 3 hours of risk management within 6 months, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Ms. Baker to accept the settlement agreement with the addition of 40 hours of community service
Second: by Dr. Winker
Vote: unanimous

Frank DeLuca was present on behalf of Dr. Schopler. A Motion for Board's Final Order by Amended Settlement Agreement in Response to Board's Counter-Offer was presented to the Board with the following terms:

Count III of the Administrative Complaint is dismissed, Count II is being subsumed into Count I, a letter of concern, an administrative fine of \$2000 within 6 months, costs of \$2020 payable within 6 months, level 1 in record keeping, 3 hours of risk management within 6 months, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months, 20 hours of community service within 12 months.

Mr. DeLuca waived the recusal of the probable cause panel members Gesek and Kochenour. Following discussion, the following action was taken by the Board:

Motion: by Dr. Winker to accept the counter settlement agreement

Second: by Dr. Gesek
Vote: unanimous

Wade B. Harrouff, D.D.S., Case No. 2009-06199 (Clarification)

This case was presented to the Board on September 17, 2010 and December 3, 2010 as response to Board's Counter-Offer Amended Settlement:

The following are minutes from December, 2010 meeting

Dr. Harrouff was present and was represented by Robert Rubin and Frank DeLuca, Esq. A two count administrative complaint filed April 27, 2010 alleged violations of s. 466.028(1)(m), F.S. of failure to keep written dental records and medical history records justifying the course of treatment involving failure to record results of initial exam, condition of teeth, TMJ, failure to record adequate diagnosis to support an extraction and failure to record consent of grafting cadaver bone into patient's left sinus area; failure to record assessment outcome and post-op infection/complications, failure to record bone loss surrounding any of the teeth or implants; s. 466.028(1)(x), F.S. of failure to meet minimum standards involving failure to formulate an adequate comprehensive diagnosis and treatment plan with treatment alternatives and risks and benefits, failure to manage post-op complications including an ongoing infection, 5 different trial antibiotic regimens, oral fistula into sinus cavity, compromised ability for the graft site to heal.

Probable Cause Panel recommendation:

reprimand, \$20,000 fine and costs within 6 months, permanently restricted from performing implant dentistry to include bone grafting in conjunction with implant prosthesis or surgery, level 1 in endodontics and level I in diagnosis and treatment planning, level I in record keeping and 3 hour ethics course within 6 months, refund to patient, laws and rules exam within 12 months, CE audit

A response to Board's counter-offer: amended settlement agreement was presented to the board with the following terms: reprimand, fine of \$20,000 payable within 12 months, costs of \$7121.47 payable within 12 months; completion of Dr. Carl Misch's 6 Series "Surgical Implant Courses" within past calendar year or to be completed with a year, level 1 in diagnosis and treatment planning, level 1 in record keeping with verified competency at dental school, 6 hours in ethics, prohibition from placing implants until successful completion of surgical placement of implants course, prohibition from performing sinus augmentation until completion of sinus augmentation portion of Dr. Misch's course; refund to patient, CE courses may be audited for next biennium, pass the laws and rules exam within 12 months.

Following review, the following action was taken by the board:

Motion: by Dr. Gesek to reject the amended settlement agreement
Second: by Ms. Gainey
Vote: unanimous

Motion: by Dr. Gesek to issue a reprimand, \$20,000 fine and costs within 6 months, permanent restriction from sinus augmentation in conjunction with implant surgeries, level 1 in endodontics and level I in diagnosis and treatment planning, level III in recordkeeping and 6 hour ethics course within 6 months, risk management course, refund to patient, laws and rules exam within 12 months, CE audit

Second: by Ms. Gainey
Vote: unanimous

The clarification is to remove the level 1 continuing education involving endodontics as there was no endodontic treatment in this case and the recommendation of the probable cause panel was incorrect in the December minute shell. Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek to accept the clarification to delete the requirement for a course in endodontics
Second: by Dr. Kochenour
Vote: unanimous

Teresa Householder, D.R., Case No. 2009-09993, Default Waiver (Melzer, Winker)

Ms. Householder, dental radiographer, was not present nor represented by counsel. An administrative complaint filed December 7, 2009 alleged violation of s. 466.028(1)(aa), F.S. of a violation of a lawful order of the board involving failure to pay costs of \$497.31 by April 2, 2009.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek to find her in default and she has waived her rights to a formal hearing
Second: by Ms. Edinger
Vote: unanimous

Motion: by Dr. Kochenour to adopt findings of fact and conclusions of law as the board's own and find they are violations of dental practice act
Second: by Dr. Gesek
Vote: unanimous

Motion: by Dr. Gesek to impose revocation
Second: by Dr. Stevens
Vote: unanimous

A Motion for Costs of \$949.85 was presented to the Board.

Motion: by Dr. Gesek to approve motion to assess costs
Second: by Dr. Kochenour
Vote: unanimous

Martha Somohano, D.R., Case No. 2010-11066, Default Waiver (Gesek, Kochenour)

Ms. Somohano, dental radiographer, was not present nor represented by counsel. An administrative complaint filed October 18, 2010 alleged violation of s. 466.0281)(m) by maintaining dental records that did not accurately and honestly record the dental procedures performed, 466.028()(t) F.S. by committing fraud, deceit or misconduct, 466.028(1)(ff) F.S. by operating or causing to be operated a dental office below minimum acceptable standards of performance, 466.028(1)(p) by dispensing controlled drugs without authorization or using false names and/or names without permission; and 466.028(1)(y) F.S. by performing procedures which exceeded scope of her certificate. Ms. Somohano was arrested for 10 counts of insurance fraud, larceny, grand theft, fraudulent prescriptions, fraudulent billing, practicing beyond the scope while working at Advanced Dental Innovations.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Melzer to find her in default and she has waived her rights to hearing
Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Melzer to adopt findings of fact and conclusions of law as the board's own
Second: by Dr. Winker
Vote: unanimous

Motion: by Dr. Melzer to revoke the dental radiographer license
Second: by Dr. Winker
Vote: unanimous

A Motion for Costs of \$21,558.89 was presented to the Board.

Motion: by Dr. Winker to assess costs of \$21,558.89
Second: by Dr. Melzer
Vote: unanimous

**Keith A. Brooks, D.D.S., Case No. 2010-08696, Voluntary Relinquishment
(Probable Cause waived)**

Dr. Brooks was not present nor represented by counsel. The complaint alleges violation of 466.028(1)(aa), F.S., for failure to pay \$5,000 fine and costs of \$453.98 for prior final order DOH-10-0600-FOI-MQA filed on 3/3/10. The final order was based on an Administrative Complaint filed September 25, 2009 alleging violations of s. 466.028(1) (II), F.S., of failure to pay a one-time assessment fee of \$250. His license is currently delinquent. A Voluntary Relinquishment of license was presented to the board.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek to accept the voluntary relinquishment
Second: by Dr. Kochenour
Vote: unanimous

**Don Curl, DDS, Case No. 2010-05466, Voluntary Relinquishment
(PC waived)**

Dr. Curl was not present nor represented by counsel. The complaint alleges that on March 18, 2010, Dr. Curl suddenly closed his practice without notice and without having completed patient's dental treatment. Possible violation of s. 466.028(1)(x), (II), F.S. Respondent stated he suffered a stroke on 12/03/09 that forced him to retire and look for succeeding practitioner.

A Voluntary Relinquishment of license was presented to the board.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek to accept the voluntary relinquishment
Second: by Dr. Kochenour
Vote: unanimous

**Crystal Walker, D.R., Case No. 2010-05913, Voluntary Relinquishment
(Gesek, Kochenour)**

Ms. Walker, dental radiographer, was not present nor represented by counsel. An administrative complaint filed October 18, 2010, alleged violations of s. 466.028(1)(y), F.S. of practice beyond the scope. Respondent gave patient anesthesia and extracted a tooth.

A Voluntary Relinquishment of license was presented to the board.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Winker to accept the voluntary relinquishment
Second: by Ms. Edinger
Vote: unanimous

PETITIONS

Jerald Williams, D.M.D., Request for Variance or Waiver

Dr. Williams was present and was not represented by counsel. He is requesting a variance to 64B5-2.013(1)(c), F.A.C. He passed the clinical exam in March, 2007 and has been in full time practice in Georgia since 1999. He is asking for a waiver of the 13 month period so that he may take the laws and rules exam.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek to approve the petition for variance or waiver
Second: by Ms. Edinger
Vote: motion passes with Dr. Winker opposed

APPEARANCES, APPLICATION REVIEW, OTHER REQUESTS

Daniel Schafft, D.M.D., Applicant for Dental Examination and Licensure

Dr. Schafft was present and was not represented by counsel. He is appearing due to action, consent agreement issued by the Massachusetts board. He completed all terms and conditions of probation on January 11, 2010.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Stevens to approve the application
Second: by Ms. Edinger
Vote: unanimous

John F. Capriccio, Request for Reinstatement of License

Mr. Bayo requested that this case be continued to the next meeting. Dr. Morgan asked if he was current with his continuing education.

Michelle C. Miller, Applicant for Dental Hygiene Examination (Settlement Agreement)

Ms. Miller was not present nor represented by counsel. Morris Shelkofsky, Assistant Attorney General with Department of Health represented the Department. A settlement agreement between Ms. Miller and the Department of Health to permit her to take the exam again without charge was presented to the Board for ratification.

Following discussion, the following action was taken by the board:

Motion: by Dr. Winker to approve the settlement agreement
Second: by Dr. Gesek
Vote: unanimous

Robin D. Young, D.D.S., Request for Extension

Dr. Young was present and was represented by Karl Acuff, Esquire. She is requesting an extension of one year, or until she obtains employment in order to send in payment for her costs. To date, nothing has been paid from this DOAH case which concluded April, 2008.

Dr. Judy Rivenbark, PRN, advised the board that Dr. Young is up to date and is in compliance with the PRN contract.

Following discussion, the following action was taken by the board:

Motion: by Dr. Gesek to grant a one year extension to develop a repayment schedule to repay the costs within a three year period.

Second: by Dr. Winker

Vote: motion passes with Dr. Morgan opposed

Tina Dunham, R.D.H., Request for Reinstatement

Ms. Dunham was present and was not represented by counsel. A voluntary interim agreement to withdraw from practice was executed by the licensee and was filed on May 13, 2010. Dr. Rivenbark, the Professional Resource Network, appeared with Ms. Dunham. Dr. Rivenbark stated Ms. Dunham is in compliance at this time.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Winker to approve the request for reinstatement

Second: by Ms. Baker

Vote: unanimous

Vu Dinh Ngo, D.M.D., Request for Approval of Monitor Change

Dr. Ngo is requesting approval for a change of monitor during his probationary period. New monitor – Dr. Hoang, resume provided.

Following discussion, the following action was taken by the board:

Motion: by Dr. Stevens to approve the new monitor as long as Dr. Hoang's license is not encumbered

Second: by Dr. Winker

Vote: unanimous

Fleming Island Development Center, Application for Approval of Expanded Duties Program

Ms. Evelyn Mundy and Ms. Laurie Jackson were present and not represented by counsel. An application/course for expanded functions certification to dental assistants was presented to the board for review.

Following discussion, the following action was taken by the Board:

Motion: by Dr. Gesek to approve the application upon receipt of current curriculum vitas for educational personnel

Second: by Dr. Melzer

Vote: unanimous

OLD BUSINESS

None

NEW BUSINESS

Dr. Melzer would like to head a committee to review privatization for the dental board. Dr. Sol Brotman and Dr. Faustino Garcia were recommended as advisors, and Dr. Winker and Dr. Gesek also asked to be included on the committee.

ADJOURNMENT

The meeting was adjourned at 11:30 a.m.