

MINUTES

TENNESSEE BOARD OF DENTISTRY MEETING

Date: October 5-6, 2023

Location: Tennessee Department of Health
665 Mainstream Dr.
Nashville, TN 37243

Members Present: Phillip Kemp, DDS- President
Robert Caldwell, DMD
Greg Kemp, DDS
Thao Kinsey, RDH
Edward Moody, DDS
Maricela Rodriguez, DDS
Jayson Tabor, DDS
Steven Zambrano DDS
Airica Puckett, RDH
Naomi Martin, RDA

Staff Present: Ailene Macias, Director
Paetria Morgan, Senior Associate General Counsel

The board meeting began at 9:06 a.m., and the Conflict-of-Interest statement was reviewed by Ms. Morgan before the agenda items were discussed.

MINUTES

Dr. Zambrano made a motion to approve the July 2023 Board Meeting Minutes. Dr. Rodriguez seconded the motion, and the motion carried.

INTERVIEWS

Laura Ike, DDS- Dr. Ike was asked to come before the board regarding the National Practitioner Databank report submitted with her application for licensure. Dr. Ike had previously served in the Navy as a dentist/oral pathologist, which is when the incidents occurred. She was stationed in Hawaii to do forensics for their dental office. During that time, Dr. Ike was going through some personal issues and was dissatisfied with the Navy, just wanting at that time to get out of the military. Dr. Ike states that while coming back from a mission with the Navy from Vietnam, she drank some alcohol on a flight back to the U.S. Another service member observed her drinking alcohol and it was reported to the practitioner databank. Dr. Zambrano asked about the report on the practitioner databank claiming that she was practicing impaired. Dr. Ike stated on a mission in Korea, she did not go to the second day of the meeting on the mission, and she had cleared out the mini bar in her hotel room, but she did not practice impaired. Dr. Ike stated that she would never practice impaired, and her whole issue at that time with the military was that she believed that they did not take patient safety seriously. She is currently teaching at LMU, and has a Georgia license. Dr. Ike is hoping to get her license as a dentist in Tennessee, to open a biopsy clinic in the state. She stated that she does not wish to actively practice clinical dentistry in the state, and only would like to run a biopsy clinic instead. Ms. Puckett made a motion to approve the application for

licensure, pending an evaluation by the Wellness Foundation, and following any recommendations (if any) that the foundation may advise. Dr. Tabor seconded the motion, and the motion carried.

RATIFICATIONS

Ms. Kinsey made a motion to approve the following:

1. New licenses, reinstatements/reactivations, and retirements.
2. Specialties, certifications, and permits.
3. Administrative Revocations

Dr. Tabor seconded the motion, and the motion carried.

APPROVAL OR DENIAL OF WAIVERS AND EXEMPTIONS

Dr. Rodriguez made a motion to ratify the approvals or denials of the following waivers:

1. Gaines, Cori RDA
2. Gault, Judith RDH (denied waiver)
3. Glynn, Elaina RDH
4. Nyquist, Jillian DDS

Dr. Greg Kemp seconded the motion, and the motion carried.

APPROVAL OR DENIAL OF CONTINUING EDUCATION, CPR COURSES AND/OR COURSES SUBMITTED BY INDIVIDUALS

Dr. Zambrano made a motion to approve the following continuing education courses:

1. Pickering & Allen Orthodontics- "The New Mechanics of Orthodontics: Passive Self-Ligation."
2. Scenic City Orthodontics- "Comprehensive Interdisciplinary Care"
3. Cumberland Surgical Arts and Associates- "Medical Emergencies Refresher"
4. Dr. Ariel Clark- "Shared Trauma and Moral Injury," "TN-PSQ: A Resource for Mental Health & Suicide Prevention for Health Professionals," "QPR Suicide Prevention Training," and "A Shared Common Peril: A Powerful Cement Which Binds Us."

Ms. Kinsey seconded the motion, and the motion carried.

DENTAL ASSISTING PROGRAM

Ms. Kinsey made a motion to approve the following programs:

1. Delta Technical College
2. Dental Assisting Academy of Middle TN
3. Miller-Motte College of Chattanooga
4. TCAT Dickson Dental Assisting
5. TN College of Applied Technology- Pulaski
6. TN Elite Dental Assistant Academy, LLC

Dr. Rodriguez seconded the motion, and the motion carried.

PROGRAMS AND CERTIFICATION COURSES

Ms. Puckett made a motion to approve the following courses:

Administration of Local Anesthesia

1. Excel Dental Educators
2. Northeast Mississippi Community College
3. TSU Dental Hygiene Program

Administering and Monitoring Nitrous Oxide

1. Basic Dentistry Done Better
2. Concorde Career College- Dental Hygiene
3. Excel Dental Educators
4. Interfaith Dental
5. Remington College- Dental Hygiene
6. Roane State Community College

Coronal Polishing

1. Chattanooga State Community College
2. Excel Dental Educators
3. Interfaith Dental
4. Tennessee College of Applied Technology at Knoxville

Dental Radiology

1. Basic Dentistry Done Better
2. Delta Technical College of Horn Lake, MS
3. Excel Dental Educators
4. Interfaith Dental
5. Tennessee College of Applied Technology at Knoxville

Sealant Application

1. Basic Dentistry Done Better
2. Complete Dental Care Educational Center
3. Dental Staff School of Tennessee
4. Excel Dental Educators
5. Interfaith Dental
6. Tennessee College of Applied Technology at Knoxville
7. University of Tennessee College of Dentistry

Nitrous Oxide Monitoring

1. Basic Dentistry Done Better
2. Chattanooga State Community College
3. Complete Dental Care Educational Center
4. Dental Staff School of Tennessee
5. Excel Dental Educators
6. Interfaith Dental
7. Tennessee College of Applied Technology at Knoxville

Ms. Kinsey seconded the motion, and the motion carried.

EQUIVALENCY OF COURSES

Ms. Kinsey made a motion to approve the following:

Local Anesthesia

1. Fellows, Vonda- University of KY
2. Moore, Janet- University of Colorado School of Dental Medicine
3. Steward, Leah- Community College of Denver

Administering and Monitoring Nitrous Oxide

1. Alexandru, Adrienne- Loma Linda University
2. Alfrey, Melissa- Charles Stewart Mott Community College
3. Booher, Cassidy- Western KY University
4. Bostic, Chloe- Wytheville Community College
5. Click, Allie- Western KY University
6. Collins, Katelyn- Western KY University
7. Edge, Lauren- Wayne Community College
8. England, Averil- AB Tech Community College
9. Fellows, Vonda- University of KY
10. Fulkerson, Sara- Western KY University
11. Grant, Bethany- University of MN Twin Cities
12. Hettick, Katie- Carrington College
13. Horn, Rebekah- University of Nebraska Medical Center
14. Johnson, Christopher- West LA College
15. Latzka, Megan- St. Cloud Tech & Community College
16. McDermott, Michelle- Concorde Community College, Garden Grove CA
17. McKee Kathryn- San Joaquin Valley College
18. McLean, Sara- Western KY University
19. Michalowski, Kayla- University of MN
20. Moore, Janet- University of Colorado School of Dental Medicine
21. Rader, Katherine- Moreno Valley Riverside Community College
22. Spottek, Kaylee- Community College of Denver
23. Stewart, Leah- Community College of Denver
24. Winningham, Ashley- University College of Bangor, Maine

Radiology

1. Loveland, Leann- Atlantic County Institute of Technology, NJ

Dr. Greg Kemp seconded the motion, and the motion carried.

Dr. Zambrano made a motion to uphold the denial of the following courses:

Denied Courses

1. King, Marah- The Medical Institute of Kentucky- Restorative and Prosthetic
2. Wyckhouse, Bethany- Colorado School of Dental Assisting- Radiology

Ms. Kinsey seconded the motion, and the motion carried.

CORRESPONDENCE

ADA article- Patient shielding during dentomaxillofacial radiography- The board members were asked to review an article published by the ADA, from the American Academy of Oral and Maxillofacial radiology, concerning a study done on patient shielding during radiology in the dental office. Dr. Moody stated although there was an article published on the subject, the board should review more information and research before considering making a statement or policy on patient shielding. Dr. Tabor discussed that each dental professional should use their best judgement when determining what is best for individual patients when looking at risk assessments, instead of the board making a blanket statement which may not be best for each individual case. Dr. Phillip Kemp agreed that a statement or policy regarding patient shielding when doing radiology is not needed, and the dentists should make decisions based on each patient's needs during treatment.

REPORTS

Financial Report- The new division Fiscal Director, Ms. Emily Godwin, came before the board to present the financial report. Ms. Godwin stated they had not received the closing report for the year, so the report presented would be based on the preliminary reports. She reminded the board members that this could mean there could be minor changes to the final year end report. The reports showed that over the last 3 years there were increases in salaries and wages for the health boards staff, after market studies resulted in raises, in an effort to retain employees. Based on the previous fiscal reports, the board did reduce fees for applications and renewals, based on the revenues for the board exceeding the allowable amount. Ms. Godwin presented a report based on the reserve balance being reduced, with increased expenditures and the fee reductions being in place. Given these factors, the board was advised they will reach their target reduced carry over balance much quicker than previously estimated. The estimated time the board would reach the reduced balance would be 3.75 years. Ms. Godwin advised there would be increases in technology expenses and likely an increase in wages/salaries in the next year as well. She presented options for projected increases of the fees, to help the board members visualize application fee increases and the effect they would have on the carry over balance in revenue. Dr. Phillip Kemp asked why the board would need to consider increasing the application fees so soon after the rules went into effect in April 2023. Ms. Godwin stated with the salary/wage increases, technology upgrades, and other expenditures increases, it may be advised to take a less aggressive approach to fee decreases to not reduce the carry over balance so much that it would become a concern for the board. It was discussed with the board members the length of time a change in rules can take, which would make the process slower for increasing fees if a rule change began too close to the projected timeframe the carry over balance would be depleted. Ms. Godwin advised the board they may not want to wait too long into the 3.75 year estimated timeframe, to look at changing the rules to increase application fees. The board members opted to hold off on considering fee changes for at least 2 future meetings to consider more data from the financial reports.

Office of Investigations- Mr. Roger Knowlton presented the OIV report. Since the start of 2023, there were 319 new complaints opened, and 284 complaints were closed. As of September 2023, there were 113 complaints open.

Executive Director Report- Ms. Macias presented the report, stating the 2024 meeting dates were scheduled for: January 11-12, April 11-12, July 11-12, and September 26-27. From January 2023 to September 2023, the number of new initial applications opened for dentists were 275, there were 320 for dental hygienists, there were 1071 for dental assistants, and 50 were opened for facilities. The total number of new licenses issued was 276 for dentists, 335 for dental hygienists, 1051 for dental assistants,

and 45 for facilities. Over 77% of all dental professionals renewed their licenses online during 2023. The total number of active licenses as of 9/30/23 was 21,216.

OGC Report- Ms. Paetria Morgan presented the OGC report. There were 11 consent orders and 4 agreed orders to be presented at the meeting. There were 59 open cases in OGC, and no appeals in Chancery Court. There were 2 contested cases scheduled for the second day of the board meeting.

Tennessee Dental Wellness Foundation- Dr. David Sain presented the TDWF report. In July 2024, Dr. Sain will be retiring and will be replaced by Dr. Tyner. Dr. Sain reported that the nationwide numbers of relapses, overdoses and overdose deaths have reached 100,000 per year. Approximately 80% of all opioid overdose deaths involve Fentanyl use. Davidson County has the second highest rate of overdose deaths per population (101/100,000) in the nation only behind Baltimore. In September, the TDWF held their Dr. Mac Conference in Murfreesboro, with approximately 70 attendees.

CE Broker Report- The CE Broker report showed that there were 8,665 registered accounts in their system for TN dental professionals.

Updates from the Schools of Dentistry-

Meharry School of Dentistry- Meharry is entering their second year of increased class enrollment. They have built a new 42 operatory clinic at the school, to handle the increased class sizes. They report that they, like many dental schools, are struggling to find more faculty for the school. Meharry is working on a program to partner with the military branches, to recruit service members into the dental and medical fields after they leave the military. The school has received grant money to help with programs to encourage minority students to join the dental and medical professional fields. Meharry will be celebrating their 150th anniversary shortly. They had 10 participants in their international dentist program, which is 2 years in length. Dr. Grey spoke about the EFDA certification course, and the demand for the course remains high. Meharry is planning on having 4 separate EFDA course offerings next year. They have 21 students participating in their Fall EFDA course session.

UT School of Dentistry- Dr. Jerry McKinney provided the UT School of Dentistry update. Dr. Ragain was at the ADA meeting in Orlando, and he was unable to attend the board meeting. Dr. Ragain will be retiring as the dean of the dental school in September 2024. Their current D1 class has 121 students, which is the largest class they have had in many years. They have been approved to increase the dental hygiene program class size to 48. They are hoping to expand the dentistry class size to 130 students.

OTHER BUSINESS, RULE CHANGES, AND/OR POLICY CHANGES

Dentist supervision discussion- Ms. Morgan a commonly seen complaint opened with the board and the consultants, related to disciplining supervising dentists who allow unlicensed individuals to practice as well as supervisees with expired licenses and registrations. The authority of the board to discipline these licenses falls under 63-5-124(a)(1); 63-5-124(a)(12), and Rule 0460-01-.12(7). The questions posed to the board members was related to whether they would like to pursue discipline against the supervising dentist if: he/she is an employee, contract or otherwise, of the practice and has no ownership in the practice; he/she works at multiple locations and has different supervisees assigned to them regularly; the dentist owner is rarely at the practice and the dentist employee is the dentist primarily on-site. Dr. Moody stated any dentist who is supervising in a dental office, and the dentist is on-site supervising the dental hygienists and dental assistants, therefore they are responsible for ensuring that all the licenses are valid for everyone they are supervising. Dr. Rodriguez felt both the dentist supervising in the office and the owner of the practice should be held responsible for allowing an unlicensed or uncertified person to practice in the office. Dr. Zambrano asked if the corporations who own the dental offices in these cases are fined for allowing unlicensed practice in one of their offices, instead of only disciplining the supervising dentists. Dr. Tabor made a motion that both the dentist owner and the supervising dentists in a dental office have potential liability in cases involving unlicensed or uncertified practice by a dental

hygienist or dental assistant in the office, and it would be considered on a case-by-case basis. Ms. Puckett seconded the motion, and the motion carried.

Ms. Morgan spoke to the board about the provided copy of the Dental Compact language, which was put into statute, but there was no date provided yet for when the compact would go into effect. There would need to be 4 more states which would join as a compact state before the compact could go into effect. Future discussions would take place at board meetings regarding whether new rules would need to be promulgated in reference to the compact.

The board members were provided documents regarding the new federal law which would allow for health professional licensure for military service members and their spouses under certain circumstances to not be required to apply for licensure through the regular process to practice in the state. The board would not be responsible for promulgating rules related to this new law, since it would apply to all health licensure types.

COMMITTEE AND TASKFORCE UPDATES

The board members were asked to consider appointing a new CSMD Committee member, since the current member could not attend the meetings any longer. Dr. Caldwell spoke briefly about the committee and how often they meet. Dr. Zambrano asked if 2 different board members could be appointed so they could rotate attendance at the meetings. Ms. Morgan replied that only 1 board member could be appointed to fill the seat on the committee. Dr. Tabor volunteered to serve as the board member serving on the CSMD Committee. Dr. Greg Kemp made a motion to approve Dr. Tabor as the new CSMD Committee member. Ms. Kinsey seconded the motion, and the motion carried.

ORDERS OF COMPLIANCE

Gill, Eleanor DDS- Dr. Gill's license had previously been suspended in Tennessee after her Mississippi dental license had been suspended in 2017. As part of the order suspending the license, Dr. Gill had to complete all requirements for her license in Mississippi and complete any recommendations from the Tennessee Dental Wellness Foundation. Dr. Gill appeared before the board to request that the suspension be lifted from her license, to start the 1-year probation period required in the original board order. All conditions of the order were met, and she maintained the advocacy of the Dental Wellness Foundation. Dr. Gill was requesting that her license be reinstated with the suspension lifted, so she could retire the license once it is back in good standing. She was wanting to have the suspension lifted so the NPDB would reflect the license was reinstated. Ms. Puckett made a motion to lift the suspension and reinstate the license. Dr. Tabor seconded the motion, and the motion carried. The motion was modified by Ms. Puckett to accept the order as written, and Dr. Tabor seconded the motion. The motion carried.

Perry, Nicole RDA- Ms. Perry appeared before the board to request the suspension of her license to be lifted. In July 2023, her license had been suspended after she had submitted a forged CPR card in 2014, then submitted forged continuing education documents in response to both the 2017-2018 and 2019-2020 audit cycles. Ms. Perry stated that she was ready to be back to work after some time off, and she had previously been burned out, resulting in making bad decisions. Ms. Kinsey made a motion to approve the order as written to lift the suspension from the license, and Dr. Zambrano seconded the motion. The motion carried.

Taylor, Ginger RDH- Ms. Taylor appeared before the board to request the suspension on her license be lifted. The license was suspended in 2019 for practicing when not physically or mentally capable of doing so. Ms. Taylor completed all requirements of the previous order and maintained the advocacy of the Tennessee Dental Wellness Foundation. The proposed order lifting the suspension from her license would require that her license be placed on probation for a minimum of 5 years. Ms. Puckett made a motion to

accept the order as written to lift the suspension from the license, and Dr. Tabor seconded the motion. The motion carried.

AGREED CITATIONS

Dr. Tabor made a motion to approve the following agreed citations:

Continuing Education

- | | |
|--------------------------|----------------------------|
| 1. Brunk, Lauren RDA | 19. Linkus, Andrew DDS |
| 2. Butler, Allison RDA | 20. Locke, Charlotte, RDH |
| 3. Carroll, Lori RDA | 21. Marlow, Payton RDA |
| 4. Connor, Hayley RDA | 22. Massey, Shawn RDH |
| 5. Cortez, Martha RDA | 23. Meyer, Felicia RDA |
| 6. Devaney, Kaley RDA | 24. Morales, Anna RDA |
| 7. Eudaly, Erin DDS | 25. Nabors, Thomas III DDS |
| 8. Frink, Brittany RDH | 26. Owen, Joni RDA |
| 9. Harradon, Brianna RDA | 27. Paul, Shelby RDA |
| 10. Harshman, Callie RDA | 28. Ruark, Mark DDS |
| 11. Hildreth, Kelsey RDA | 29. Sosa, Angelica RDA |
| 12. Hughes, Ashely RDA | 30. Spivey, Ariel RDA |
| 13. Jestes, Lubov RDH | 31. Stephens, Brittany RDH |
| 14. Jewell, Yeganeh DDS | 32. Swift, Laura RDA |
| 15. Johnson, Ashley RDA | 33. Taylor, Trevor DDS |
| 16. Kreyer, Edit RDA | 34. Thompson, Allison RDA |
| 17. Lamons, Brianna RDA | 35. Turner, Lakesny RDA |
| 18. Levey, Bard DDS | 36. Uselton, Alison RDH |

Ms. Kinsey seconded the motion, and the motion carried.

CONSENT ORDERS/AGREED ORDERS

1. *Barnes, Tanya RDA*- Dr. Rodriguez was recused from this order. Ms. Barnes previously entered into an agreed citation for non-compliance with the 2015-2016 continuing education audit. She was audited in April 2022 for the 2019-2020 continuing education audit cycle, and was found again to be non-compliant with the audit requirements. Multiple notices of the audit violation were sent from the board office to Ms. Barnes, but she failed to complete the audit requirements. In August 2022, she made up the deficient continuing education hours in the subject of chemical dependency, but she did not pay the civil penalty until March 2023. As part of the order, Ms. Barnes must pay the costs and fees associated with the presentation of the order, which can be up to \$1,000. The disciplinary action will be reported to the National Practitioner Data Bank. Ms. Puckett made a motion to approve the order, and Dr. Tabor seconded the motion. The motion carried.
2. *Bryson, Amanda RDA*- Ms. Bryson was sent the notice of audit for the 2019-2020 continuing education audit cycle in June 2022. After receiving the agreed citation in the mail, Ms. Bryson submitted the make up hours she was deficient for the audit cycle, but she failed to pay the civil penalty and the signed agreed citation document. As part of the order, Ms. Bryson must pay the \$150 civil penalty, and the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Dr. Tabor made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.
3. *Cannon, Brandon DDS*- Dr. Caldwell was recused from this order. Dr. Cannon had been advertising his practice stating he was a wisdom tooth, dental implant, tooth extraction,

anesthesia, bone grafting, impacted teeth, and sinus lift specialist. After an interview with an investigator, Dr. Cannon removed the term “specialist” from his practice website. As part of the order, Dr. Cannon must pay \$200 in civil penalties for inappropriately advertising as a specialist, and the costs for the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Dr. Tabor made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.

4. *Donesky, Melvin DDS*- Dr. Donesky had been involved in a flirtatious relationship with a dental assistant who worked in his office, but the dental assistant was also a patient for their own dental work. Dr. Donesky and the dental assistant viewed pornography in his dental office. He mistakenly believed he had consent to intimately touch the dental assistant while they were watching pornography. In January 2022, Dr. Donesky pled guilty to misdemeanor assault for intimately touching the dental assistant without consent. He has now instituted a firm no fraternization policy at his office. As part of the order, Dr. Donesky must pay \$500 in civil penalties for the criminal conviction violation, and the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Dr. Rodriguez made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.
5. *Fordjour, Isaac DDS*- Dr. Moody and Ms. Kinsey were recused from this order. In January 2021, Dr. Fordjour was audited as part of his deep sedation/general anesthesia permit. He was found to be non-compliant with the audit for failing to have proof of ACLS and 4 continuing education hours in the subject of sedation/anesthesia for the 2017-2018 cycle. Dr. Fordjour was audited for his continuing education for the 2019-2020 cycle, in which he was unable to provide proof of 40 hours of continuing education to include 4 hours in the subject of sedation/anesthesia and 2 hours in the subject of controlled substance prescribing, and proof of ACLS. He has paid \$600 towards his civil penalties. As part of the order, Dr. Fordjour’s license will be placed on probation for at least 1 year, he must make up the deficient continuing education hours, submit proof of a current ACLS certification, and pay a total of \$2,400 in civil penalties along with the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Dr. Tabor made a motion to accept the order, and Ms. Puckett seconded the motion. The motion carried.
6. *Huang, Linda DDS*- Dr. Caldwell was recused from this order. On Dr. Huang’s practice website has advertised herself as an implant specialist since 2018. She also has advertised herself as an Invisalign specialist. After being interviewed by the Department’s Investigator regarding these allegations, she removed all inappropriate use of the term specialist from her website. As part of the order, Dr. Huang must pay a total of \$500 in civil penalties, as well as the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Dr. Tabor made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.
7. *Lara, Susana RDA*- In May 2023, Ms. Lara submitted a reinstatement application for her dental assistant registration. The application reported that she had performed the duties of a registered dental assistant, including exposing x-rays, for 17 months on the expired registration. Ms. Lara reported on her application that she monitored nitrous oxide, sedation, and anesthesia. As part of the order, she must pay a total of \$3,000 in civil penalties and the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Ms. Puckett made a motion to approve the order and Ms. Kinsey seconded the motion. The motion carried.
8. *Melle, Ashley RDA*- In May 2023, Ms. Melle submitted her application for reinstatement of her dental assistant registration. The application indicated that she had performed all duties of a registered dental assistant, including exposing x-rays for 7 months on the expired registration. As part of the order, Ms. Melle must pay \$1,500 in civil penalties and the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner

Databank. Dr. Tabor made a motion to approve the order, and Dr. Caldwell seconded the motion. The motion carried.

9. *Moye, Kristen RDA*- Dr. Moody was recused from this order. Ms. Moye was audited for the 2019-2020 continuing education cycle, and failed to provide proof of CPR certification before September 2019. As part of the order, Ms. Moye must pay \$150 in civil penalties, submit proof of a current CPR certification, and pay the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Ms. Kinsey made a motion to approve the order, and Dr. Rodriguez seconded the motion. The motion carried.
10. *Mullinax, Larry DDS*- Dr. Mullinax prescribed a ninety-day supply of gabapentin to an immediate family member for a non-dental purpose. As part of the order, he must pay a total of \$500 in civil penalties as well as the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Ms. Kinsey made a motion to approve the order, and Ms. Puckett seconded the motion. The motion carried.
11. *Myers, Tina RDA*- Dr. Caldwell was recused from this order. In July 2023, Ms. Myers was notified that she was selected to be audited for the 2021-2022 continuing education cycle. In response to the audit notification, she submitted documents demonstrating that she had completed the continuing education and CPR requirements for the cycle. However, one of the certificates submitted to the board office was forged. She was found to be non-compliant with the audit by failing to provide proof of 2 hours of continuing education in the subject of chemical dependency. As part of the order, Ms. Myers must pay \$150 for the civil penalty for audit non-compliance, pay a \$500 civil penalty for submitting a forged certificate, pay the costs associated with the presentation of the order, and make up the 2 hours of continuing education in chemical dependency. The disciplinary action will be reported to the National Practitioner Databank. Ms. Puckett made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.
12. *Naegele, Jessika RDA*- In June 2023, Ms. Naegele submitted a reinstatement application for her dental assistant registration. The application showed that her registration had expired in August 2021, and she had performed all duties of a registered dental assistant, including exposing x-rays, for 22 months on the expired registration. As part of the order, she must pay \$2,000 in civil penalties, as well as the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Ms. Kinsey made a motion to approve the order, and Dr. Tabor seconded the motion. The motion carried.
13. *Newberry, Patricia DDS*- Dr. Moody was recused from this order. In September 2020, Dr. Newberry was notified that she was selected to be audited for the 2017-2018 continuing education cycle. In December 2020, she submitted documents for the audit, but was found to be non-compliant. After multiple notices were sent from December 2020 to November 2022 to Dr. Newberry, she submitted additional documentation but was still non-compliant with the audit. As part of the order, Dr. Newberry must pay \$500 in civil penalties, pay the costs associated with the presentation of the order, and make up the deficiencies found in the audit. The disciplinary action will be reported to the National Practitioner Databank. Ms. Puckett made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.
14. *Rhodes, Haley RDA*- Dr. Moody was recused from this order. In December 2021, Ms. Rhodes was notified that she was selected to be audited for the 2019-2020 continuing education audit cycle. After she failed to provide proof of compliance with the audit requirements, she was sent multiple notices of the need to complete the audit agreed citation for her audit non-compliance status. Ms. Rhodes asserts that she had the required CPR certification during the cycle, but she has failed to provide proof that she had CPR from January 2019 to December 2019. As part of the order, she must provide proof of a current CPR certification, pay the \$150 civil penalty for audit non-compliance, and pay the costs associated with the presentation of the order. Ms. Puckett made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.

15. *Ritter, James DDS*- In June 2023, the board office received a reinstatement application for Dr. Ritter's dental assistant. The application indicated that Dr. Ritter was the supervising dentist while the dental assistant was exposing x-rays in his dental office on an expired registration for 6 months. As part of the order, Dr. Ritter must pay a total of \$400 in civil penalties, and the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Dr. Tabor made a motion to approve the order, and Dr. Rodriguez seconded the motion. The motion carried.
16. *Stone, Sharon RDH*- Dr. Rodriguez was recused from this order. In April 2022, Ms. Stone was notified that she was selected to be audited for the 2019-2022 continuing education cycle. Multiple notices of audit non-compliance and the resulting agreed citation were sent to Ms. Stone from the board office. She failed to provide proof of 2 hours of continuing education in chemical dependency or complete the agreed citation process. As part of the order, Ms. Stone must pay the \$300 civil penalty, and pay the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Dr. Tabor made a motion to approve the order, and Ms. Kinsey seconded the motion. The motion carried.
17. *Yarbrough, Jaysen DDS*- In May 2023, the board office received a reinstatement application from Dr. Yarbrough's dental assistant. The application indicated that the dental assistant had exposed x-rays on an expired registration for 7 months. As part of the order, Dr. Yarbrough must pay \$500 in civil penalties, as well as the costs associated with the presentation of the order. The disciplinary action will be reported to the National Practitioner Databank. Ms. Kinsey made a motion to approve the order, and Dr. Greg Kemp seconded the motion. The motion carried.

There were no public comments or questions. Dr. Tabor gave an update on the Anesthesia Committee which took place earlier in the week. Ms. Morgan reminded the board members that the topic was not sunshined or properly noticed, so they should proceed with caution. Dr. Tabor spoke about the committee planning to create a recredentialing process for sedation courses, and what would require a course provider to notify the board of any changes to their faculty/staff/curriculum. He then stated he felt there should be more general dentists on the committee to represent the general dentists who want to obtain their sedation permits. Dr. Tabor spoke to the board about the displeasure of Dr. Adams and the pediatric dentists in the state of the removal of Dr. Caldwell being taken off the committee, without being replaced by another pediatric dentist for that seat. He also stated there was a monopoly for DOCs Education for the limited sedation courses, because the other courses on the board website are no longer available from the providers. Ms. Morgan reminded the board members that if they wished to change the make up of the committee members would require a rule change, and the topic would need to be properly sunshined at a future board meeting for discussion.

OCTOBER 6TH

CONTESTED CASE HEARING

The board members present for the hearing were: Dr. Phillip Kemp, Dr. Rodriguez, Dr. Tabor, Dr. Greg Kemp, Ms. Kinsey, and Ms. Martin.

Dr. Kurt Holmes, DDS- The hearing was called to order at 9:04 a.m.. Ms. Paetria Morgan was present as the representative of the State of Tennessee. Dr. Holmes was in attendance with his legal representatives, Mr. John Floyd and Mr. Nathan Dickerson. The notice of charges was distributed to the board members in attendance to review the matter at hand. There were no disclosures or reported conflicts of interest from any of the board members in attendance. The judge clarified his role at the hearing to make rulings,

approving or denying the evidence being admitted, questions of law, but he would not participate in the findings of facts or the ultimate decision of the outcome of the hearing which is the responsibility of the board members. A quorum was present at the hearing, which allowed the hearing to proceed. The judge reminded everyone that the use of electronic devices or the internet to do outside research or communicate between board members during the hearing, and the board members could only consider the evidence presented in the hearing when they made their decisions. The judge discussed the technical orders, including the notice of charges, witness and exhibit lists, evidence, and the charges to be reviewed. The judge noted there was an affidavit which was denied for being admitted into evidence for the hearing. Mr. Floyd asked the judge to dismiss the case, because he believed his client did not violate a rule or statute, and was not charged with violating a board policy. Ms. Morgan stated the notice of charges did show that Dr. Holmes was being charged with a violation of the board rules. The judge denied the request from Mr. Floyd to dismiss the case. The judge discussed the board policies which are posted on the board website, in which a policy adopted by the board in 2017 related to the charges to be discussed in the hearing. He discussed Dr. Holmes' lack of ACLS certification during his continuing education audit from April 2018 to September 2018, as part of maintaining his sedation permit. Mr. Floyd made an objection to the judge discussing or explaining the board policy, because Dr. Holmes was being charged with violating a rule instead of the policy. The judge stated a policy adopted by the board can be deemed as a clarification or interpretation of a rule which the board already had in place. The judge stated because a policy was deemed as acceptable to clarify the language of a board rule, the request for a dismissal from Mr. Floyd was denied due to those facts.

Ms. Morgan discussed the facts related to the case, regarding the requirement of a dentist to maintain ACLS as part of a sedation permit. Dr. Holmes failed to maintain ACLS from April 2018-September 2018, which was required for his comprehensive conscious sedation permit. Mr. Floyd gave his opening statement, in which he reiterated that he believed Dr. Holmes did not violate a rule or statute, because he was not providing sedation during that time period in 2018. Mr. Floyd stated Dr. Holmes called the board office to report he was not providing sedation, and he was under the impression that he was not required to maintain ACLS or complete continuing education if he was not using the sedation permit at that time. Ms. Morgan called Ms. Ailene Macias as her first witness. The judge swore in Ms. Macias before allowing questioning to begin. It was clarified that Ms. Macias is an employee of the State of Tennessee and is the Director for the Board of Dentistry. The board policy regarding sedation permit audits was discussed related to what the board staff is looking for when reviewing sedation audits. Opposing counsel objected to having the sedation audit policy being admitted into evidence because Dr. Holmes was not being charged with violating a board policy. Ms. Morgan argued that the policy was relevant because it was a document created by the board to clarify the board rules regarding what the rule is requiring for the sedation audit. The board policy on sedation audits was not admitted into evidence. Ms. Macias confirmed Dr. Holmes was deficient in the 2017-2018 sedation audit by proof of ACLS April 2018-September 2018, resulting in this non-compliance status with the audit.

Mr. Floyd, the attorney representing Dr. Holmes, had the opportunity to ask questions of Ms. Macias. He wished to ask questions about the policy related to the sedation audit, although he opposed to the policy being published into evidence. Mr. Floyd argued that Dr. Holmes was being charged with violating the Practice Act, and not with a policy. A copy of a screenshot from the board website was published into evidence. Mr. Floyd asked questions of Ms. Macias which were disallowed by the judge because they were legal questions which would need to be responded to or answered by an attorney. Ms. Morgan asked if a sedation permit holder could simply relinquish their sedation permit at any time if they no longer wished to maintain it. Ms. Macias confirmed the statement was correct. Mr. Floyd stated that the board was trying to take away the license of Dr. Holmes for violating the sedation audit requirements.

Mr. Floyd called Dr. Holmes to the stand to be questioned as a witness. Dr. Holmes gave a description of his schooling and training as a dentist along with his training in sedation. He confirmed that he had never

been charged with a violation of any rules since being licensed. Dr. Holmes stated he goes above and beyond to ensure the safety of his patients, getting additional sedation training that is more than what the board requires. He reminded the board that he was not providing sedation at the time his ACLS permit had lapsed during that period. Mr. Floyd made a motion to dismiss the charges.

Ms. Morgan stated BLS is not the same as ACLS, and Dr. Holmes admits he had a gap in his ACLS certification for the period in question. She confirmed the board staff, and the Office of General Counsel all confirmed the gap in ACLS in the sedation audit warranted discipline for the violation of the audit requirements. The board rules do not make an exception to the rule for this sedation audit requirement. She asked the board members to consider the facts and determine that discipline was warranted for this audit violation by Dr. Holmes for his sedation permit requirements.

Mr. Floyd stated that Dr. Holmes did not deserve a mark on his license for an audit violation, since he did not believe he was doing anything wrong by having a gap in his ACLS certification when he was not providing sedation services. Mr. Floyd stated Dr. Holmes felt he was doing the right thing, and he was not a risk to the public during that period. He did not believe the license of Dr. Holmes should be disciplined for the audit violation.

The board members were charged by the judge with their task when considering the determination in this case. The decisions to be made by the board were to be determined by information admitted into evidence during the hearing. Mr. Floyd objected to having the findings of fact from Ms. Morgan being provided to the board members. He requested to be able to give an oral statement for the findings of fact, instead of a written document. The findings of fact from Ms. Morgan were determined by the judge to be allowed due to following with the board rules and statutes. Mr. Floyd stated the proposed finding of fact did not apply to the charges or situation at hand. The board members commended Dr. Holmes on his dedication to providing safe sedation to his patients that he received more sedation training than was required. They stated although Dr. Holmes, did receive additional training, he was still non-compliant with the ACLS requirement for the sedation audit for his permit. The board members agreed this situation did warrant discipline in accordance with the board rules for the sedation permit requirements. A motion was made by Ms. Kinsey to accept the findings of fact for the state proving there was a gap in the ACLS by Dr. Holmes for his sedation audit for the period in question. The motion was seconded by Ms. Martin, and the motion carried. The board members discussed the precedent for sedation audit violations in relation to the rules for the sedation permit requirements. They discussed whether the fine or discipline could be lower for this case because Dr. Holmes was not providing sedation to patients during the ACLS gap. All board members agreed upon the rule for the sedation permit requirements being relevant in this case for the audit violation.

Dr. Phillip Kemp stated the proposed order was in line with discipline for this type of audit violation, and the penalty was appropriate for the gap in ACLS certification. Dr. Greg Kemp made a motion to accept the proposed final order for disciplining Dr. Holmes license. Dr. Rodriguez seconded the motion, and the motion carried. All board members agreed on the findings of fact, the board rules related to this case, and the precedent for other cases related to this rule for sedation permit violations applied which resulted in disciplinary action applied to Dr. Holmes situation. The board members wished to remove a statement related to the violation of the rule being a health and safety risk to the public by Dr. Holmes with the gap in his ACLS certification during the audit cycle. The board members requested to know if anything could be done for disciplining the license which would not be reported to the NPDB.

The judge went over statements with the board which pointed out that disciplinary action and a civil penalty was not required if the board would decide it was not necessary. The board members discussed the different type of license discipline and the letters of warning which are private, and do not come before the board. The agreed private censure for this case was not an option. Dr. Greg Kemp made a

motion to accept the order provided by the state as formal discipline, with the requested change previously discussed by the board members. All board members voted in agreeance with the motion, and the motion carried.

The hearing was adjourned at 11:49 a.m.