

**MINUTES**  
**TENNESSEE BOARD OF DENTISTRY**

Date: March 26, 2020

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

Members Present: Dan Meadows, DDS- President  
Robert Caldwell, DMD  
Phillip Kemp, DDS  
Thao Kinsey, RDH  
Airica Brooke Puckett, RDH  
Naomi Martin, RDA  
Edward Moody, DDS  
David Travis, DDS  
Thomas Williams, DDS  
Bettye Lynn Richert

Staff Present: Dea Smith, Executive Director  
Ailene Macias, Administrative Manager  
Jennifer Putnam, Senior Associate General Counsel

The meeting was called to order at 1:00 p.m. on Thursday, March 26, 2020, in the Iris Room located in 665 Mainstream Drive. Ms. Jennifer Putnam from the Office of General Counsel and Ms. Ailene Macias from the Board of Dentistry staff attended the meeting in-person, while other attendees joined by teleconference.

Ms. Putnam began the meeting with a roll call, showing that Dr. Meadows, Dr. Williams, Dr. Caldwell, Dr. Kemp, Dr. Moody, Ms. Kinsey, Ms. Martin, Ms. Puckett, and Ms. Richert had joined the meeting at 1:00 p.m. via telephone. Another roll call was conducted to ensure that each of them could hear each other during the first roll call, and each board member confirmed each of their peer's answers were heard. Dr. Travis and Dr. Rodriguez were not present on the call at the time the first two roll calls were taken.

A third roll call was conducted, showing that all of the board members did not have anyone present in their location from which they had joined the meeting.

Ms. Putnam then stated the purpose of the meeting was to update the board regarding the board's authority in relation to COVID-19 and also to discuss Executive Order #18. The board was unable to convene in a physical quorum to consider the matters in light of the COVID-19 pandemic, due to the CDC recommendation of limiting the number of attendees at meetings for the next eight weeks. A motion, second and a vote was needed, to confirm the board members wished to proceed with the meeting. Ms. Puckett made a motion to approve moving forward with the meeting, and Dr. Kemp seconded the motion. A roll call vote was conducted, showing that the board members wished to proceed.

Per the requirements of teleconference meetings, the following statement was read:

"Only certain matters are proper for a teleconference; accordingly, I need a motion and a second followed by a roll call vote if the matter or matters to be discussed meet the following requirements:

The subject matter requires timely action;

The physical presence of all members is not practical considering the period of time required for action; and

The participation by some or all of the members of the Board by electronic means is necessary."

Ms. Puckett made a motion stating all of the requirements for the teleconference were met. Ms. Kinsey seconded the motion, and the motion carried with a roll call vote of all board members present on the teleconference call.

Ms. Putnam reminded the board members of the jurisdiction and authority of the board. The board does not have the ability to take action regarding COVID-19, as all directives must come from the Governor's office. Any changes in the board's authority regarding these matters would have to come in the form of an executive order from the Governor's Office. The board has the following six powers within their statutory authority: rules regarding examinations, conduct examinations, conduct disciplinary hearings, issue licenses, conduct on-site anesthesia/sedation inspections, establish the rules under the practice act, and approve courses for schools.

Ms. Putnam turned the meeting over to Dr. Meadows, after requesting that each person on the call introduce themselves before speaking. After a brief statement regarding the COVID-19 pandemic, and its affect on the country, the state, our communities, and the dental profession, Dr. Meadows opened up the floor to the board members to begin asking questions regarding Executive Order #18 that came out on March 23rd.

Commissioner Piercey released a letter in response to Executive Order #18, to confirm that dental professionals should use their best good-faith judgment in determining how to comply. The order was put in to place to restrict non-emergency dental or oral procedures that are not a medical emergency. This order was put into place to protect the public and the dental professionals working in dental offices. The Commissioner's letter also explained that violating Executive Order #18 was classified as a Class A misdemeanor. Violating the Executive Order would result in the violation being reported to the district attorney's office in the county in which the dental office is located, which would lead to possible criminal charges being filed. An investigation could also be opened in the Office of Investigations, leading to possible disciplinary action being taken against the dental professional's license for the violation of the order as well.

Dr. Kemp stated the order and the letters were pretty clear as to how dental professionals should conduct business at this time, and made a motion for a letter or email to be drafted to inform all licensees of what to expect if they do not follow the executive order. Ms. Martin seconded the motion. Dr. Meadows asked if any board members would like to discuss the motion that was made, and no discussion was requested. Ms. Putnam conducted a roll- call vote, with all board members present approving the motion, and the

motion carried.

Ms. Putnam discussed with the board members what was considered appropriate communications via email regarding board business. Any board action must be discussed in an open meeting, in which the public is properly notified of the meeting. Discussion of board business amongst board members or with licensees is prohibited outside of an open public meeting. The prohibition applies to phone calls and emails. Board members were informed that email communication between board members regarding COVID-19 and possible board response, was inappropriate and was a violation of the Open Meetings Act. Any emails sent in violation of that act, are subject to a public records request. Ms. Putnam advised that any questions regarding the Board's authority in response to the current pandemic, be submitted directly to the Board Office or to herself in the Office of General Counsel. A roll-call vote was taken to ensure that all board members understood the discussion on proper communications regarding board business. All board members confirmed their understanding of the information discussed.

Dr. Kemp stated that emails sent regarding COVID-19, were out of concern due to the severity of the current situation. He questioned why it took so long for the board to have a meeting regarding the pandemic, when other board members had requested a meeting previously. He asked of Ms. Putnam why she was not responding to his emails in relation to the COVID-19 pandemic or the board response to the pandemic. Dr. Kemp wanted information to be sent out from the board to licensees with information or possibly supporting the dental professionals during this difficult time, possibly a statement or encouragement from the board. Dr. Kemp asked Ms. Putnam if it was within her ability to request from the Secretary of State, or from the Board President for a special meeting sooner, if the need should arise in possible future situations. Ms. Putnam first answered the question regarding her lack of response to Dr. Kemp's emails, stating that she had been copied on the emails concerning COVID-19 amongst the board members, and due to the fact that those were inappropriate communications, it was not appropriate for her to respond. Ms. Putnam reminded the board members of their training in relation to communications with the public and licensees, in which they are to respond that board business cannot be discussed outside of board meetings. All questions are to be referred to the board office and/or the Office of General Counsel. Ms. Putnam stated she had only received one phone call from a licensee to ask how to implement Executive Order #18, and had not received any other calls or emails on how to proceed by any professional associations or licensees with other inquiries concerning the matter as of yet. Any future questions regarding board response, statements, or action, should be directed to board counsel or the board staff. Speaking to the question regarding the delay in having an emergency meeting, Ms. Putnam stated that all directives are coming from the Governor's Office, and the board does not have the ability or authority to take action on its own. The only boards that had emergency meetings regarding COVID-19 were the ambulatory, medical, and nursing boards, whose licensees are those individuals who are working in the hospitals directly treating the patients during this pandemic. The delay in having a meeting with the board or sending out emails to licensees was not in any way due to a lack of caring about the pandemic, it was due to the lack of authority for the board to take action.

Dr. Kemp stated he felt the current pandemic was similar to when the board calls a special meeting that would be needed due to an imminent threat to the public, such as cases where a licensee was practicing under the influence. The purpose of his emails regarding COVID-19 was with the public in mind, wishing to protect the public from harm. Ms. Putnam stated those special meetings were for summary suspensions where counsel recommends the meeting take place due to an investigation where evidence was found that

a practitioner was an imminent threat to the public while practicing. A response regarding situations such as COVID-19 are not the same as when there is a meeting where a summary suspension is needed. In the future, board members were advised to contact the board staff or Ms. Putnam in order to express concern or the need to have a meeting, to determine if a meeting is needed and establish an agenda.

Terryl Propper, the TDA President, asked whether the board did not believe that exposure to COVID-19 was a situation where the public and dental professionals were in imminent danger. Ms. Putnam clarified that her statement was merely giving an example for when a meeting was needed for situations such as a summary suspension, and the differences between a summary suspension and the COVID-19 pandemic. Ms. Putnam stated that she was in no way stating that COVID-19 was not a threat to the public or dental professionals.

Ms. Puckett stated that she received many phone calls from licensees regarding COVID-19, and fielded the questions to the board office, and she would have liked the board to have a meeting sooner about all of these questions. Ms. Puckett expressed frustration in being unable to help the dental community more during the pandemic. Ms. Putnam stated that she understood the frustration, but the board is bound by law and must act within the limits of its statutory authority. Ms. Puckett made a motion to have an email drafted to send to licensees to let them know the board met to discuss their concerns, what was discussed at the meeting, and to express their support during the pandemic. Ms. Martin seconded the motion. Dr. Propper stated an email concerning Executive Order #18, and it would be redundant to send another email about it. Dr. Propper stated that she fielded most calls about COVID-19, which was why we didn't get more calls. Ms. Putnam requested that Dr. Propper contact her directly, and that she also field calls regarding these types of questions to the board in the future. Dr. Propper claimed she was not told to contact the board directly, which Dr. Meadows disputed as he had referred Dr. Propper to Ms. Putnam concerning this matter.

Dr. Kemp requested that the board waive all continuing education requirements, to help support the dental professionals. Ms. Putnam let the board know the continuing education requirement is a rule, and a request would have to be made to the Governor's Office to ask that the rule regarding continuing education be waived due to COVID-19. Dr. Travis joined the tele-conference at 1:50 p.m., and requested to ask permission from the governor to have the statutory authority to meet during emergency situations. Ms. Putnam advised the board to send her emails directly to suggest any items to bring before the governor to help the dental profession during this crisis, but reminded the board members not to email each other regarding these requests. The board was reminded that any matters discussed between board members outside of a board meeting would make those suggestions null and void and would not allow those actions to be taken by the board due to inappropriate email communications. Dr. Kemp requested that the board release a statement that we would not discipline licensees for continuing education violations for the rest of this year. He believed the Governor had too many requests at this time to send requests from our board, and wants the board to do something to help the dental profession without having to send a request for another executive order. Ms. Putnam reminded the board members of the ability of the board/board consultant to approve continuing education audit waivers if licensees were not able to obtain their continuing education due to the current pandemic. Since the waiver option is written into the board rules, it would not require an executive order to be made in relation to continuing education. Dr. Watson, the Second District TDA Representative, joined the meeting and requested an electronic waiver to fill out a form online to request continuing education waivers if needed. Ms. Putnam

responded that we could not accurately answer a question about electronic waivers, but the question could be relayed to the IT department to find out if it would be possible to have that option available. Roy Thompson, an ADA Trustee joined the call, with a question about how social distancing will affect 4th year dental student's ability to take their exams for licensure. Dr. Thompson asked if there would be alternative means of licensure to waive these exams, if dental students were not able to take the exams in the near future. Ms. Putnam stated a request for waiving the exams or changing licensure requirements would have to be approved in an executive order from the Governor's Office.

Dr. Meadows discussed the idea of sending an email to all licensees to give additional information on the availability and rules on continuing education waivers, so those needing waivers would know the proper way to request a waiver if needed. Dr. Kemp disagreed with having each licensee submit a waiver for continuing education, which would put more stress on the board staff being overwhelmed with requests for waivers. He believes that many waiver requests would be a burden to the board staff, causing a large increase in the work load with each waiver request having to reply to with a letter from the board office. Ms. Putnam reminded the board members that licensees are only required to submit proof of continuing education if they are being audited. Only 5% of licensees are audited each month, and only those being audited would need to request a waiver if they did need one due to the current crisis. Dr. Kemp still requested that an email be sent out that we would not be auditing anyone for the rest of this year, and we would waive all continuing education for this year. Ms. Putnam once again stated that the board could not waive all continuing education for the rest of the year, because it was not within the board authority due to continuing education being a rule that would need to be waived by executive order by the Governor. Regarding the rules and authority of the board, Ms. Putnam stated there were two options: 1. Send a request to the Governor's Office to waive all continuing education for dental professionals for the rest of the year; 2. Send an email notifying licensees the board is aware of the fear and concern of the current pandemic, and remind them of the option to apply for waiver due to the hardships caused by the current pandemic. Dr. Travis made a motion to approve the second option given by Ms. Putnam. Dr. Kemp seconded the motion. Dr. Caldwell asked how the current pandemic would affect the CPR/ACLS/PALS requirements for licensees. Ms. Putnam stated licensees could request a waiver of the CPR requirements as well, if needed due to certification courses being cancelled. Ms. Putnam conducted a roll-call vote, with all board members participating in the tele-conference voting in favor of passing the motion for an email to be drafted with content regarding board support during this difficult time, and giving information regarding the option for waivers for continuing education if necessary.

Dr. Kemp requested discussion of Dr. Ragain's email concerning the exam requirements for dental students who will not be able to take the necessary exams for licensing requirements. The request from Dr. Ragain was sent directly to the Governor's Office already for review, to request an executive order for changes to the exam requirements for licensure during the pandemic. Ms. Putnam stated that she would draft an email expressing support for Dr. Ragain's request regarding this issue, and the request being given high priority if able to do so. The board does not have the authority to make the waiver of the exam requirement, and the request has already been submitted to the Governor's Office for review. Dr. Kemp clarified that it would be a temporary waiver of the exam requirement to eliminate the live-patient portion, and a modified exam would be given to eliminate patient contact if approved by the Governor. Dr. Kemp made a motion to express support of Dr. Ragain's letter, as well as to temporarily suspend the requirement of the periodontal portion of the exam, and expedite the letter to the Governor's Office to ask for an executive order to be signed as soon as possible. Dr. Travis seconded the motion, and roll-call vote

was conducted by Ms. Putnam, confirming that all board members participating in the tele-conference approved the motion.

Dr. Kemp encouraged the donation of supplies of PPE to hospitals to aid in the COVID-19 crisis. He asked that the website ([www.smiletennessee.org](http://www.smiletennessee.org)) for PPE donations be included in the mail going out to licensees, so help supply hospitals with much needed equipment.

Dr. Meadows adjourned the meeting at 2:40 p.m., since there were no other questions or topics to discuss.