Open Minutes
Missouri Dental Board
Policy Review Committee

January 24, 2002 7:00 p.m.

Best Western Capital Inn
1937 Christy Drive
Jefferson City, Missouri

The open meeting of the Missouri Dental Board's Policy Review Committee was called to order by Dr. Guy Deyton, Chairperson, at approximately 7:10 p.m. on Thursday, January 24, 2002, at the Best Western Capital Inn, 1937 Christy Drive, in Jefferson City, Missouri.

COMMITTEE MEMBERS PRESENT:
Dr. Guy S. Deyton, Committee Chairperson
Dr. Rolfe C. McCoy, Member
Ms. Patricia A. Lepp, Member
Ms. Maxine Thompson, Member

BOARD MEMBERS PRESENT:
Larry W. Jackson, D.D.S., President
Rodney L. Beard, D.D.S., Vice President

STAFF MEMBERS PRESENT:
Sharlene Rimiller, Executive Director

LEGAL COUNSEL PRESENT:
Rikki Jones, Assistant Attorney General
Nanci Wisdom, Private Legal Counsel

GUESTS:
Dr. Jacob Lippert, Missouri Dental Association
Lori Bruce, RDH, Missouri Dental Hygienists' Association
Debra Webb, RDH, Missouri Dental Hygienists' Association
Dr. Michael Hoffman, Missouri Dental Association
Dr. Daniel R. Menze, Missouri Dental Association
Anna Lippert, Alliance of the ADA Liaison to ADA Well Being Committee
Dr. Dan Haney, Missouri Dental Association

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

APPROVAL OF AGENDA

Dr. Deyton added the rule on advertising to the open agenda. Ms. Bruce asked for an update on the proposed rule on public health settings. There being no further additions or corrections to the agenda, the agenda was approved as revised.

PUBLIC HEALTH SETTINGS RULE

Mrs. Rimiller provided the PRC and guests with an update on the progress of the emergency and proposed rules on public health settings. The promulgation of the rule is a joint effort by both the Board and the Department of Health. The Board's process is complete inasmuch as the rule and emergency statement has been drafted and tentatively approved by the Department's legal counsel. The hold up now is with the Department of Health. Their legal counsel, Barb Wood, has possession of the rule and it is going through their review and approval process. Mrs. Rimiller has tried to contact Ms. Wood to find out when the Board might expect their process to be completed and as of this date, Ms. Wood has not returned her calls. As soon as the Department of Health completes their process, the Board will send their rules to Director Driskill for his signature. After that, both the Board's and the Department of Health's rules will be filed simultaneously with the Secretary of State. The Dental Board will file its rules under their Chapter 332 authority and the Department of Health will file the same rules under their own chapter. Ms. Jones will call Barb Wood on Monday to find out the reason for the delay. Mrs. Rimiller said there are three rules that need to be filed at the same time, the proposed rule and the emergency rule on public health settings and the equipment rule. The emergency rule will go into effect ten days after it is filed with the Secretary of State's Office. The proposed rules will process through the normal rulemaking channels and should be in effect before the emergency rule expires.

DEEP SEDATION/GENERAL ANESTHESIA

Dr. Deyton updated the PRC and guests with the current status of the Board's proposed rule on deep sedation/general anesthesia. The rule was withdrawn after the hearing before the Joint Committee on Administrative Rules (JCAR) because of the CRNA challenge of the Board's statutory authority. Dr. Deyton said that he thought the problems had been resolved by the time JCAR met by telephone conference call on the Tuesday following the hearing but time ran out and the rule had to be withdrawn. Dr. Deyton said that he hopes the revised Section 332.362 will be put forward in this legislative session so there is no question regarding the Board's statutory authority to regulate anesthesia in a dental office. This is not legislation being sought by the Board.

The Associations were asked for their position regarding the Dental Board's activities toward rules regulating sedation and anesthesia. Dr. Haney said that the dentists in his area do not want the Board regulating the types of drugs that can be used in conscious sedation. He said that he understands the problems facing the Dental Board but the problems should be addressed by the Board without putting all dentists under constraints. Dr. Lippert asked the PRC to distinguish the difference between the rule being proposed and the proposed statute. Dr. Hoffman said that he is supportive of the proposed statute change. Ms. Bruce indicated that she does not have a problem with the proposed statute change but the MDHA has not met or had a chance to consider

the matter. Dr. Lippert questioned the need for section 2 in the proposed statute requiring site certificates for any dental office where deep sedation/general anesthesia or conscious sedation is administered, which includes enteral sedation. He wondered if this binds all forms of conscious sedation to a site certificate. Dr. Lippert questioned if this language could be an issue addressed by a rule change rather than a statute change. Dr. Deyton said that he thought that the rule, when promulgated, would require a permit for any form of conscious sedation as long as the Board excluded drugs prescribed for anxiolysis and/or pain control. The legislation could be introduced before the association boards meet so Dr. Deyton asked the associations to pole their boards and find out their position on the proposed statute if it is not too difficult a task.

CONSCIOUS SEDATION PROPOSED RULE

Dr. Deyton asked for any comments with regard to the PRC's proposed rule on Conscious Sedation, specifically with regard to the requirements for enteral conscious sedation. Dr. Hoffman stated that enteral conscious sedation is often a higher risk procedure than parenteral conscious sedation. He recommended the same level of training for dentists administering enteral conscious sedation as those administering parenteral conscious sedation. However, Dr. Hoffman said the unfortunate part of that recommendation is the Board would be penalizing a huge group of dentists practicing within constraints. Dr. Deyton also agreed that the proposed rule could be creating a barrier regarding access to care for children. Dr. Hoffman said that the rule does not address the combination technique, which is oral sedation and nitrous. He thought this combination to be extremely dangerous. Dr. Deyton asked the associations to review the proposed rule with their boards and notify the PRC of their position. He thought that the Board would move forward with both the deep sedation/general anesthesia rule and the conscious sedation rule at the same time. Dr. Haney suggested that the Board examine the conscious sedation rule and address the sleep dentistry issue and leave the rest alone. Dr. Lippert suggested some type of examination in lieu of the two-day course required in the proposed rule. The committee evaluating the site could administer the examination to ensure the Board that the licensee is capable of administering enteral sedation, especially for those dentists who have been doing it for years without any problem. Dr. Deyton asked Dr. Lippert for any suggested language. In conclusion, Dr. Deyton asked for the support of the professional associations with regard to the Board's endeavors to regulate anesthesia in the dental office.

RULE ON ADDRESSING THE PUBLIC

Dr. Deyton presented his draft proposed changes to 4 CSR 110-2.110 – Addressing the Public. Dr. Deyton explained that the Board is being inundated by advertising complaints. As a result, he questioned if the Board needs to examine the rules to determine if changes are needed and/or do a better job of helping licensees understand the rules. Areas of concern include advertisements where the general dentist presents himself/herself as a specialist, such as advertising a specialty in orthodontics, and advertisements of non-specialty interest areas that do not contain the required disclaimers. The PRC referenced the applicable rules. There was also a question raised with regard to limiting a practice to a specific specialty. If the practice is limited, the dentist cannot practice in any other field of dentistry. Ms. Bruce asked if the practice

of orthodontics includes the extraction of teeth. The answer is if the orthodontist limits his/her practice to orthodontics, s/he cannot extract teeth but it is alright for a general dentist that does orthodontics to extract teeth as long as his or her practice is not limited. Dr. Beard reported that the Complaint Review Committee will be addressing the compliance issue on the advertising rules in the near future and asked for some direction from the PRC. The following action was suggested for advertising violations. A letter of concern for the first violation. A letter of concern with a request that the licensee post a disclaimer in the waiting room large enough so patients will know that the dentist is not a specialist for the second instance. In the third instance, the Board would pursue discipline. It was also suggested that more questions on the advertising rule be included in the jurisprudence examination. Another suggestion was that the Board periodically canvas the yellow pages telephone listings. In closing, Dr. Deyton suggested that the associations look at the current rules on advertising and help their members understand their meaning and if the rules need to be amended for clarity or other reasons, please notify the PRC.

HEALING ARTS VS. FALLON

Dr. Deyton briefly outlined the Supreme Court decision in a Board of Healing Arts case relating to whether the Board is the appropriate venue to determine if quality of care decisions rendered by insurance consultants fall within or outside the standard of care. The Missouri Supreme Court said there are two different kinds of decisions made by consultants. One is a contractual decision and that is not typically within the venue of the regulatory board. Decisions that have to do with judgments of diagnosis and what is the appropriate care is clearly within the venue of the Board to determine. Consultants are held to the same standards that any physician would be with respect to their judgment on appropriate care. Dr. Deyton explained that the Dental Board is not really sure of the long-term implications of the Court's ruling but it is important for this Board to be aware of the case.

ADJOURNMENT

There being no further open business to be brought before the Policy Review Committee at this time, a motion was made by Dr. McCoy and seconded by Ms. Thompson that the meeting adjourn. Motion carried unanimously. The meeting adjourned at approximately 8:47 p.m.

Respectfully submitted

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Sharlene Rimiller, Executive Director

Approved by Board on: _____