

MINUTES

**UTAH
DENTIST/DENTAL HYGIENIST
LICENSING BOARD**

May 16, 2008

**Room 474 – 4th Floor – 8:15 a.m.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 8:19 a.m.

ADJOURNED: 12:00 p.m.

Bureau Manager:
Secretary:
Division Director:

Laura Poe
Shirlene Kimball
F. David Stanley

Division Staff:

Connie Call, Compliance Specialist
Mitchell Jones, Assistant Attorney General

Conducting:

Anna Policelli, RDH, acting Chair

Board Members Present:

Brian Lundberg, DDS
Stephen Morgan, DDS
Alexander Larsen, DDS
Anna Policelli, RDH
Rich Radmall, DDS
Karen Bateman, RDH
Pamela Jolley, public member
Brent Larson, DDS

Board Members Excused:

James Ence, DDS

Guests:

Dr. Donald G. Mantyla, PIE

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

April 18, 2008 Minutes:

Dr. Morgan made a Motion to approve the minutes with corrections. The Motion was seconded. All Board members in favor.

Connie Call, Compliance Specialist
Compliance Report:

Dr. Benson: Ms. Call reported Dr. Benson appears to be in compliance with his Order. Dr. Benson requested early termination of probation last month and the request was denied. Ms. Poe reported in a review of the Physician Licensing Board minutes the

Physician's Board indicated they may consider termination of probation after a period of compliance of two years. Dr. Benson has been on probation since December 2006 and Ms. Poe indicated the Board may want to reconsider his request for termination in December 2008.

Dr. Barber: Ms. Call indicated Dr. Barber needs to submit a list of current employees to be compared to the employee affidavits in the file. Ms. Call also requested clarification regarding Dr. Barber's meetings with the Board. The minutes indicate he would be invited to meet with the Board every 9 months, but his Order reads he needs to meet every 6 months. If the Board wants to meet with him every 9 months, the Order needs to be amended. Ms. Poe indicated Dr. Barber has an unusual order and has a restricted license, not a probationary license. Ms. Poe indicated the division has developed a self assessment form to have Dr. Barber use to submit to the Board every six months and then consider moving his meeting with the Board to yearly. Ms. Poe indicated he appears to be doing well. Dr. Larson made a Motion to meet with Dr. Barber on an annual basis and have him submit self assessment reports every six months. Dr. Morgan seconded the Motion.

Discussion: Ms. Bateman voiced concern that if he only meets once a year, he may not take the restriction as seriously as he should. He needs to know he still has to answer to the Board. Ms. Poe indicated he is not currently submitting reports and if he is required to submit paperwork every six months, the Board would have more contact with him. All Board members in favor of the Motion. Ms. Poe indicated she would amend the Order to require self assessment reports every six months and meet with the Board once a year.

Paul Martinez: A Board member requested the Board reconsider Dr. Martinez' request for termination of probation. Ms. Poe indicated that Heath Earl was approved as his therapist. Dr. Radmall voiced concern that insurance companies take punitive action even after the Board and the Division has given the probationer the ok to practice on probation. Dr. Morgan stated insurance companies may see a potential for liability if the individual is on probation;

however, this is out of the Board's control. Dr. Radmall feels this issue still needs to be addressed. Ms. Poe indicated this happens with all professions and the associations need to consider addressing this issue. Ms. Policelli stated the Board's position in the past has been no one receives early release of probation. However, after Dr. Walton's presentation last month, the Board may want to consider early termination of probation if the individual has demonstrated rehabilitation. Dr. Larson stated there are a number of individuals who come before the Board with recurring problems and our charge is to protect the public. The Board needs to look at the type of problem, the potential for relapse and consider the request on a case by case basis.

Ms. Poe stated about five years ago the Division was taken to court and it was determined that similar cases need to be handled similarly, even across the professions. Based on that, there was a push to be uniform in probation. The Orders for those with substance abuse is based on extensive research and has been standardize. Sexual abuse cases do not have the same solid research. Dr. Morgan suggested before considering Dr. Martinez' request, the new therapist submit a report with his recommendation to the Board.

Paul Benson,
Probation Interview:

Ms. Bateman conducted the interview. Dr. Benson reported things are going well and indicated he has obtained more than the required continuing education. He stated he meets with a therapist once a month and indicated he does not feel he has any issues he needs to discuss with the therapist. He stated he meets with the therapist only because the Order requires him to attend therapy. Dr. Benson stated his office manager acts as his chaperon and submits the chaperon reports. He indicated he always has an assistant with him, whether or not the patient is male or female. If there is an emergency after hours, his wife or a staff member is available. Dr. Benson stated he no longer attends weekly group meetings. He indicated these meetings are for true sexual addictions and he feels his situation is different. He stated he was never addicted to pornography or sex and that his therapist agrees with him. **Dr. Benson is in compliance with the terms and conditions of his Order.** He will be scheduled

Norman Barber,
Probation Interview:

to meet with the Board in August.

Dr. Lundberg conducted the interview. Vickie Barber, Dr. Barber's wife and office manger also met with the Board. Dr. Barber presented copies of the continuing education he has obtained for the last two years. He also presented an informed consent he uses in his office. Dr. Barber provided an affidavit for a new part time staff member. Board members requested a list of all employees. A review of the file indicates that all employee affidavits are in the file. Dr. Lundberg reported the Board had made a motion to have Dr. Barber meet once a year and to have him submit self assessment reports every six months. Dr. Barber stated he would agree to the amendment. Ms. Poe indicated the amended Order and self assessment reports will be sent to him. Dr. Barber indicated May would be a good month to meet with the Board. Ms. Call stated his reports would be due in February and August. Dr. Larson thanked Mrs. Barber for her role in monitoring Dr. Barber's practice and expressed appreciation in making Board members more comfortable with Dr. Barber and his situation. **Dr. Barber appears to be in compliance with the restricted licensure requirements.**

Break at 9:45 a.m.
Reconvened: 9:55 a.m.

Paul Martinez, reconsideration of the denial to terminate probation recommendation:

Dr. Martinez again explained why he feels his probation should be terminated. He indicated he has completed the required continuing education and has made changes in his office. He stated he does not know what else he can do to show he has changed. Dr. Martinez stated he has met with Heath Earl, psychologist, twice on an individual basis and also with his family. Ms. Policelli questioned what he has learned and how has he changed the behaviors that got him into trouble in the first place? Dr. Martinez stated he now draws a clear line with his employees, he indicated he treats them as employees, not as friends. Dr. Martinez stated he only has three employees and one is his wife. He reported his practice is more peaceful and his patients are spread out evenly though out the week instead of trying to fit all patients into a three day period. Dr. Lundberg indicated the Board

wants to be certain the changes he has implemented are permanent and he will not fall back into his old ways. Dr. Martinez stated he makes sure he has good communication with the staff and takes responsibility for the office now instead of letting the staff control the office.

Dr. Morgan made a Motion to have Dr. Brunson and Dr. Earl submit a report with recommendations regarding the potential for relapse and whether or not ongoing therapy is necessary. If the report is positive, the Division could terminate the probation and the Board would not need to re-review the information. Dr. Lundberg seconded the Motion. Discussion: Dr. Martinez stated he was confused because Dr. Brunson informed him he had been released from therapy. Dr. Martinez stated last month when the Board indicated Dr. Brunson wanted him to continue in therapy, Dr. Martinez became upset. Dr. Martinez stated he spoke with Dr. Brunson who informed him he had recommended termination of therapy. Board members reviewed the April 8, 2008 letter from Dr. Brunson. Dr. Brunson's letter indicated Dr. Martinez was in compliance, but it did not address additional therapy. Mr. Jones stated Dr. Martinez does not have a pattern of sex addiction. There were incidents occurring over a period of time that were inappropriate, but Mr. Jones questioned whether or not the punishment fit the crime and stated the Order may have gone beyond what was necessary. Dr. Larson stated that as a dentist, Dr. Martinez has a position of power with patients and staff. He holds the power of employment which adds a degree of responsibility and he needs to be held accountable for his behavior. Dr. Larson stated he does not believe the Board has gone over and beyond what was necessary in this case. Dr. Larson stated Dr. Martinez has made great strides, but the Board has to be secure in its position. Ms. Bateman stated Dr. Martinez appears to have made progress and his attitude has improved. She stated she does not see the need for another report. Dr. Morgan withdrew his original Motion.

Dr. Larsen made a Motion to terminate Dr. Martinez' probation. Ms. Bateman seconded the Motion. Dr. Radmall, Ms. Bateman, and Dr. Larsen in favor of

terminating probation. Opposed: Dr. Lundberg, Dr. Morgan, Dr. Larson and Ms. Jolley. The Motion failed.

Dr. Lundberg made a Motion that pending receipt of a favorable recommendation from Dr. Earl, the Division move forward with an Order to terminate Dr. Martinez' probation. Dr. Morgan seconded the Motion. Dr. Radmall, Dr. Morgan, Ms. Jolley, Dr. Lundberg, Dr. Larson, Ms. Bateman and Ms. Policelli in favor. Dr. Larsen abstained. Motion passed.

Review change of supervisors for Dr. Rod Gardner:

Dr. Larson stated he was pleased with Dr. Gardner's proactive response in looking for a new supervisor. Dr. Morgan made a Motion to approve Jennifer Brown as the supervisor pending receipt of her communication that she understands her responsibility and role as a supervisor. Dr. Larson seconded the Motion. All Board members in favor.

Discussion regarding rule revisions:

Ms. Policelli reported the Division previously wrote rules regarding anesthesia which were placed on hold. Ms. Poe indicated she will research the work previously completed and look at incorporating those rules.

Ms. Poe reviewed with Board members the information from the American Dental Society of Anesthesiology. Ms. Poe stated it appears there are two levels of membership, the fellow and the member. Ms. Poe reported a review of the fellowship criteria appears to meet the requirements for Anesthesia Class 2-4 permits. If an individual is a fellow with the ADSA, Class 2-4 could be granted upon documentation of the fellowship from the ADSA. Dr. Larson stated he is concerned that in 10 years from now the organization may change or the requirements may change. Dr. Radmall expressed concern that these types of organizations may be self serving and if this one is approved, others will request the rules include their organization. Dr. Morgan stated he feels the Board needs to be careful when accepting these organizations. Dr. Morgan made a Motion to deny adding to the rules the American Dental Society of Anesthesiology fellowship as meeting the requirements for Anesthesia Class permits. Dr.

Radmall seconded the Motion. All Board members in favor.

Ms. Poe also reported that Dr. Engar suggested that 2 hours of Dental Ethics be required as part of the 30 hours of continuing education for renewal. Dr. Engar indicated in his correspondence the requirement could be met easily. Dr. Larson stated he would be in favor of this addition. Dr. Lundberg agreed. Dr. Larson made a Motion to include two hours of dental ethics in the 30 hour continuing education requirement for renewal of the license to become effective with the 2010 renewal period. Dr. Radmall seconded the Motion. Discussion. Concern was expressed there may not be enough time to provide a notice to all licensees and time for them to obtain the required 2 hours of continuing education in ethics for the 2010 renewal period. Ms. Poe indicated it takes 45 to 120 days for the rules process, but this would leave more than a year and a half to obtain the ethic course. Ms. Poe indicated the Division could put the notice on the web page and the associations could notify their members. Ms. Policelli suggested the notice of the change be sent with the 2010 renewal notices and take effect 2012. Dr. Larson stated that no matter what, there are some people who will not get the word no matter how long we give them. Ms. Bateman stated she agrees with Ms. Policelli. Board members determined the hours would be required for 2010. All Board members in favor of the Motion.

Review new probationer forms:

Board members reviewed the supervisory role and responsibility form and suggested changes. The form would be required to be submitted quarterly. Re-write number 3g regarding the writing of prescriptions. It is not the role of the supervisor to write the prescriptions, but the supervisor needs to be aware of the prescriptions being written.

Board members indicated they feel it is important to know if there are any changes in marital status or changes in home life and if there are any current stressors.

Ms. Poe indicated the employment log would be separated from the supervisory role and responsibility

form. The log would be part of the self assessment report. The log would be named the probationer employment log and there will be a signature line added.

Discuss recommendation for inclusion of crown preparation the WREB exam:

The WREB is looking at the addition of a typodont exercise which would include a crown preparation cut on a plastic tooth and done as part of the clinical exam; or the addition of a curriculum integrated crown preparation to be performed on patients at dental schools outside the usual exam schedule. If it is integrated, the graduating students could be eligible for licensure upon graduation.

Dr. Larson indicated a lot of states are pushing for the addition of crown preparation to the regional exams and some states may drop WREB if it is not included as part of the exam. Dr. Larson expressed concern that the exam would be increased by half a day and the examination would then take three days to complete. This places an additional burden on examiners and student cost. Dr. Morgan indicated there have been pilot programs where WREB examiners have been present in the schools to pass off certain criteria; however, the schools do not like the inclusion of WREB. The schools already have a full curriculum and including crown preparation examination in the curriculum would be difficult.

Board members indicated Ms. Poe could respond to WREB and let them know that additional crown preparation is important; however, it should be done as simple as possible, preferably on a typodont. There is concern with the increased examination time and cost.

Environmental Scan:

Ms. Poe indicated the Division would like to send Board notifications by e-mail and will have this ready for the next meeting notice.

Dr. Larson stated he has been working on a letter as discussed last month regarding prescribing practices and guidelines. He indicated he has a rough draft ready with general guidelines. He discussed with Board members medications to prescribe for mild to moderate pain. It was suggested medications like Tramadol, Tylenol with codeine prescribe between 10

and 20 tablets. Hydrocodone, 5 mg or 7.5 mg with an average of 10-20 tables with one refill. Oxycodone and Percocet is prescribed occasionally. Darvocet is prescribed rarely. For emergencies or on week-ends prescribes only a small number of tablets. Do not prescribe to anyone the dentist hasn't seen and would need to be a patient of record.

Dr. Radmall stated he received information on a free seminar on conscious sedation and questioned whether or not it would be ethical to attend. Dr. Larson stated he attended this course and felt it was very educational and is beneficial for the Board when discussing these types of issues.

Ms. Poe questioned whether or not a dental hygienist new graduate can do a working interview. She indicated there is a problem with this because the graduate is no longer a student and is not licensed and would be practicing without a license. If they want to do a working interview, the individual must be licensed. Board members agreed with this analysis.

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

June 13, 2008
Date Approved

(ss) Anna Policelli
Anna Policelli, Acting Chair, Dental/Dental Hygienist
Licensing Board

June 13, 2008
Date Approved

(ss) Laura Poe
Laura Poe, Bureau Manager, Division of Occupational &
Professional Licensing