

MINUTES

**UTAH
DENTIST AND
DENTAL HYGIENIST
BOARD MEETING**

May 21, 2009

Room 210 – 2nd Floor – 1:30 P.M.

**Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 1:31 P.M.

ADJOURNED: 5:40 P.M.

Bureau Manager:

Noel Taxin

Board Secretary:

Karen McCall

Division Compliance Manager:

Connie Call

Board Members Present:

Anna Policelli, RDH, Board Chairperson

James N. Ence, DDS

Brian L. Lundberg, DMD

Rich S. Radmall, DDS

Greg T. Beyeler, DDS

Alexander B. Larsen, DDS

Pamela L. Jolley

Karen S. Bateman, RDH

Board Members Absent:

One Vacant Position

Guests:

Monte Thomson, UDA

Dr. Don Mantyla, PIE

Joleen Van Bibber, DATC

Amy Carpenter, RDH, UDHA

Heidi Brickey, RDH, UDHA

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

FYI

Ms. Taxin notified the Board of the retirement of Director David Stanley and the appointment of Mark Steinagel as the new Director. She stated Mr. Steinagel is currently the Director of the Division of Real Estate and will start in DOPL in June 2009.

Ms. Taxin notified the Board of the resignation of Dr.

Steven Morgan due to personal reasons. She stated she has submitted 2 names for Board members and will hopefully have those people approved by the Governor by July 1, 2009.

Ms. Taxin informed the Board of the error on the agenda for today regarding the Rules Hearing. She stated the Rules Hearing is scheduled for June 18, 2009. Ms. Taxin stated the Hearing will be first on the June agenda with probation appointments last on the agenda.

MINUTES:

The minutes from the March 19, 2009 Board meeting were read.

Dr. Lundberg made a motion to approve the minutes with minor revisions. Ms. Bateman seconded the motion. The Board vote was unanimous.

BUSINESS FROM PREVIOUS MEETING:

NERB/ADEX/ADLEX

Ms. Taxin stated she and her staff have done a lot of research into the NERB, ADEX and ADLEX examinations. She stated her staff has received numerous phone calls regarding individuals taking the ADEX/ADLEX examination in Nevada and wanting to be licensed in Utah. Ms. Taxin referred to the Utah Law/Rules, 58-69-302 (1)(f), (2)(b)(i) and R156-69-302, where Utah accepts the WREB, NERB, SRTA and CRDTS. She stated the question is: Are ADEX/ADLEX NERB examinations. Ms. Taxin stated the examinations are ADEX or ADLEX but are offered through NERB which makes the answer to the question, Yes. She stated if the examination score report is submitted on NERB letterhead Utah would accept the score report. She stated the Division has received one application which documented the examination but was on Nevada State letterhead. Ms. Taxin notified the applicant if they could obtain the score report on NERB letter head she could issue the license. She stated a score report on NERB letterhead was received.

Following discussion, the Board determined Ms. Taxin has solved the examination issue amicably

for applicants who have the ADEX/ADLEX examinations through NERB.

Review Proposed Rules

Ms. Taxin stated she made some changes to the proposed Rules as recommended by the A.G.'s office and additional attorneys who review the Rules. She stated the proposed Rules are posted on the website and anyone may submit comments in writing as required. Ms. Taxin stated June 18, 2009 will be the hearing and explained the hearing process

Ms. Taxin stated she received some comments today from Monte Thompson, UDA, and if they are substantive changes the Rules Hearing process will have to be stopped to make the changes and then she will re-file for a Hearing date. Ms. Taxin read the recommendations to the Board. She stated she has not received any additional comments. Ms. Taxin asked the Board if they have any concerns regarding the way the proposed Rules are currently written.

Ms. Bateman commented she did not find the ethics course requirement they Board had recommended.

Ms. Taxin responded the ethics course was not included in the proposed Rules.

Board members stated they had a vote prior to Ms. Taxin being appointed as the Bureau Manager to include an ethics course in the Rules.

Ms. Taxin stated she could not respond to something prior to her being the Bureau Manager. She stated if the Board noticed the ethics course was not included they could have mentioned it when she sent out the proposed Rules for review and she would have included it.

The Board recommended the proposed Rules be left as written and the UDA recommendations and the ethics course requirement be considered for a later filing.

The Board requested discussion at another time regarding including the requirement of an ethics course in the Rules.

APPOINTMENTS:

2:30 pm

Connie Call, Compliance Update

Ms. Call updated the Board regarding the compliance or non-compliance of probationers.

Ms. Call reported **Dr. Tad H. Butterfield** is currently non-compliant in the following areas of his Stipulation and Order:

1. The required practice plan has not been received. This was due at his first appointment with the Board.
2. A letter stating he is self employed and will not be submitting employer reports has not been received.
3. A resume for a supervisor, or supervisor reports have not been received. These are due monthly.
4. A copy of the psychological evaluation has not been received. This was due March 18, 2009.
5. The essay has not been received. This was due March 18, 2009.

Ms. Taxin suggested the Board inquire about the status of Butterfield's practice. She stated DOPL staff have tried to call the phone number Dr. Butterfield gave and another Dentist answered saying he has purchased the space. She stated Dr. Butterfield needs to follow through on the paperwork and follow up with patients that the complaints were from.

Ms. Call stated Ms. Trujillo and Ms. McCall have called and sent letters and Dr. Butterfield has not responded to them.

Dr. Lundberg asked what the essay should include.

Ms. Taxin read that portion of the Stipulation and Order. She stated writing an essay helps the probationer think about how their actions have affected the patient, their practice, etc., and it creates some discussion/conversation between the Board and the probationer instead of yes and no answers to questions.

Ms. Call reported **Dr. David O. Hendrickson** is currently in compliance with his Stipulation and Order. She stated Dr. Hendrickson has submitted a letter requesting early termination of his probation. Ms. Call stated Dr. Hendrickson has completed 3 of the 5 year probation.

Ms. Jolley and Ms. Policelli voiced concern regarding the appearance of Dr. Hendrickson not understanding who he is allowed to prescribe to and the accepted prescribing practice as he has not always prescribed for dental issues only.

2:40 pm

Dr. Tad H. Butterfield, Probationary Interview

Dr. Butterfield met for his probationary interview.

Dr. Ence conducted the interview.

Dr. Butterfield informed the Board that he has lost his practice and has not completed any of the probationary requirements as finances are extremely dire at this time. He stated he has not submitted any paperwork as it is not applicable as he is not currently seeing any patients.

Ms. Taxin informed Dr. Butterfield if he is not working he still must submit the paperwork and write on the forms he is not working. She stated there are some things he could have been doing and completed such as write the required essay. Ms. Taxin reminded Dr. Butterfield of the Board's request for him to contact the patients who where still outstanding for services to be performed. She asked if he completed that assignment.

Dr. Butterfield responded he contact 2 patients and was informed by both that they have gone elsewhere to have work completed. He stated both requested a refund of the fees they paid him. Dr. Butterfield stated he had completed the lab work on these patients and has paid for the lab service. He questioned if he should reimburse these patients.

Dr. Ence asked how Dr. Butterfield lost his office

space.

Dr. Butterfield responded the rent was month to month as the landlord was concerned about his license being sanctioned. He stated the landlord then pulled the contract. Dr. Butterfield stated he has put some of his equipment in storage and has some stored at his home.

Dr. Ence asked Dr. Butterfield to explain what his plans are for the future.

Dr. Butterfield responded he is in the process of renting a chair in an office. He stated if it works out he can then treat his patients. He stated he has 2 options: to try to continue working in Utah or possibly try to become licensed in Texas. He stated his style of practice is very limited and that caused him to have low volume of patients which was his own choice. He stated he has also had some personal difficulties and made some poor decisions that have contributed to his situation.

Dr. Ence stated Dr. Butterfield met with the Board in January and his Stipulation and Order was reviewed with the Board giving guidance regarding some things Dr. Butterfield could do. He stated Dr. Butterfield could have been working on and completed some of the requirements which do not require fees. Dr. Ence asked Dr. Butterfield if he plans to pursue completing the Stipulation and Order requirements for Utah or go in a different direction. He stated reimbursing patients would have a cost but the following required items have no cost attached:

- 1. Submitting the practice plan which the Board requested to be submitted prior to this meeting.**
- 2. Submitting a statement regarding of being self employed.**
- 3. Submitting a resume from a proposed supervisor and a letter stating the proposed supervisor has read the Stipulation and Order and is willing to supervise and assist Dr. Butterfield in being successful in his probation.**
- 4. And submitting the required essay which**

was due March 18, 2009.

Dr. Ence reminded Dr. Butterfield that he notified the Board he had an appointment for the required psychological evaluation which was due March 18, 2009. He asked if the evaluation had been completed.

Dr. Butterfield responded he canceled the appointment due to the lack of funds.

Dr. Ence asked if Dr. Butterfield read the Stipulation and Order.

Dr. Butterfield responded he has read the document and he took the viewpoint if he could not meet the requirements financially then he would not do any of the requirements.

Dr. Ence stated the Board is responsible to protect the public. He reminded Dr. Butterfield he received fees for work to be completed and did not complete the work. He stated Dr. Butterfield agreed to the requirements in the Stipulation and Order by signing the document. Dr. Ence stated the Board will assist Dr. Butterfield through the process and when he is compliant it is noted in the minutes but after a period of time being non-compliant the Board recommends steps be taken for further action against the license. Dr. Ence stated if he was on probation he would have reviewed the Stipulation and Order and completed all the non-monetary requirements and submitted the documentation as quickly as possible. He stated it is imperative Dr. Butterfield complete the requirements he agreed to.

Ms. Taxin stated Dr. Butterfield should be communicating with the Division by contacting Ms. Trujillo in order to document he is making some effort.

Dr. Ence clarified Dr. Butterfield did not start or complete any of the Stipulation and Order requirements due to his financial situation.

Dr. Butterfield responded Dr. Ence is correct.

Dr. Ence asked if Dr. Butterfield is doing any work in Dentistry.

Dr. Butterfield responded he is not.

Ms. Taxin asked if he plans to return to the practice of Dentistry or if he plans to obtain other employment.

Dr. Butterfield responded he plans to return to Dentistry. He stated he may apply for a Texas license as he has had an opportunity to move there but obtaining a license in Texas is required.

Dr. Ence stated Texas will request a verification of the Utah license and the Division would respond the license is on probation and Dr. Butterfield is out of compliance. He stated it might make a difference to Texas if Dr. Butterfield was in compliance with the Utah probation requirements.

Ms. Taxin stated Texas could review the verification with Dr. Butterfield's complete application and issue a license, they could issue a probationary license or they could deny licensure until the Utah probation is completed. She stated, unrelated to Texas, he would still have to meet the Utah requirements to complete the Utah probation.

Ms. Taxin suggested Dr. Butterfield contact the U of U Medical Center and Valley Mental Health regarding the psychological evaluation as they have the sliding fee scale. She also stated if he obtains employment he should contact Ms. Trujillo and should meet again in June.

Ms. Taxin stated patients have been calling regarding compensation. She asked how Dr. Butterfield is doing on that issue.

Dr. Butterfield responded he has done nothing to compensate his patients.

Dr. Lundberg stated the Board wants the patients

taken care of. He suggested Dr. Butterfield ask if they will accept everything but the lab fees and if they say “yes” then send the payment.

Ms. Jolley stated Dr. Butterfield can be in compliance working off his probation time whether he is paid or volunteers services.

Ms. Taxin recommended he contact Donated Dental. She stated the required minimum number of hours he must work may be adjusted if necessary. She again suggested he communicate with Ms. Trujillo.

Ms. Bateman stated there are some courses on the internet which are free and his deadline to complete CE in ethics is coming up.

Ms. Taxin asked Dr. Butterfield to contact her next week for information on AADE courses. She also suggested he try AADE.org and to Google and check free on-line Dental ethical courses for additional information.

Dr. Ence recommended Dr. Butterfield be scheduled to meet again June 18, 2009 to review his progress.

The Board determined Dr. Butterfield is out of compliance with his Stipulation and Order as he has not completed any of the requirements.

An appointment was made for Dr. Butterfield to meet again June 18, 2009. A sample practice plan was given to Dr. Butterfield to assist him in writing his own practice plan to submit by June 18, 2009.

3:00 pm

Dr. David O. Hendrickson, Probationary Interview

Dr. Hendrickson met for his probationary interview.

Dr. Ence conducted the interview.

Dr. Ence commented Dr. Hendrickson is in compliance with his Stipulation and Order. He then read Dr. Hendrickson’s letter requesting early termination of probation.

Dr. Hendrickson commented he has completed about 30 hours of CE since the first of the year. Dr. Hendrickson stated he listened to the Board's recommendations and no longer prescribes to family. He stated he now suggests family members see their own physician and his wife now goes through her internist for medical treatment.

Dr. Ence asked Dr. Hendrickson to share what he has learned from the process.

Dr. Hendrickson responded the counseling helped open their eyes regarding what happens when someone is addicted. He stated he is much more cautious and more aware regarding patients who may be addicts and is now very restrictive and prescribes small amounts of medications. Dr. Hendrickson stated Dr. Moore is their family internist and if they require an antibiotic or medication he prescribes for that person.

Ms. Policelli clarified that Dr. Hendrickson is clear on his scope of practice as a Dentist and Dr. Moore fulfills medical issues practices.

Dr. Hendrickson confirmed the prescriptions are written for Dental issues only and Dr. Moore sees patients, diagnosis, treats and writes prescriptions for his own medical practice.

Dr. Ence made a motion to terminate Dr. Hendrickson from probation based on his completing the requirements of his probation except the time frame and his compliance with his Stipulation and Order.

Dr. Lundberg seconded the motion.

Dr. Beyeler, Dr. Larsen, Dr. Ence, Dr. Lundberg and Dr. Radmall voted in favor of the motion.

Ms. Jolley, Ms. Bateman and Ms. Policelli voted against the motion.

The motion passed with a majority vote.

The Board reminded Dr. Hendrickson to continue treating for Dental work only.

Ms. Taxin recommended Dr. Hendrickson print out and review the current State and Federal Laws and Rules yearly and if he has any questions to contact the Division for clarification.

3:15 pm

Dr. Scott Taylor, Telephonic Discussion regarding Examination Requirements

Dr. Beyeler conducted the interview.

Dr. Taylor explained he has an opportunity to move to Utah if can obtain the Utah license. He stated he took the Washington State examination in 1990 and was informed he needed to do a comparison with the WREB examination for the same year to determine equivalency of the examinations. Dr. Taylor stated Washington does not retain examination content from that long ago and he is unable to write out a comparison. He stated he believes the WREB and the Washington State examination were equivalent and he provided a verbal explanation of comparison based on his review of the WREB examination content. Dr. Taylor asked for assistance.

Dr. Ence responded it is the responsibility of the applicant to show equivalency in writing. He stated Dr. Taylor might ask one of the University of Washington clinical instructors and/or a classmate who took the examination at the same time to write a statement collaborating equivalency to submit with his application.

Ms. Taxin stated she would prefer a statement from someone from an institution. She stated the Division has prepared a form to assist with the comparison which she will send out to Dr. Taylor to submit with his application.

Dr. Larsen referred Dr. Taylor to an orthodontist in Park City who was practicing in Washington and came to Utah.

Dr. Taylor thanked Ms. Taxin and the Board and stated he believes he will be able to locate someone to

assist with a comparison.

Ms. McCall stated the next Board meeting will be June 18, 2009. She stated a complete application will need to be received no later than June 11, 2009 in order to prepare it for the Board to review at that meeting.

APPLICATIONS:

Lisa D. Barr, Examination Comparison Review Ms. Bateman reviewed Ms. Barr's comparison of the WREB examination and the California examination and determined the California examination was equivalent to the WREB in 1996.

Ms. Policelli reviewed the comparison and concurred with Ms. Bateman.

The Board recommended Ms. Barr be granted a Dental Hygienist license in the State of Utah.

DISCUSSION ITEMS:

Dr. Norman Barber

Ms. Taxin stated she was reviewing Dr. Barber's file and noted he has been on probation over 20 years. She stated his initial violation was 1983 through 1987 and there have been no problems since. Ms. Taxin stated the AG's office reviewed the file and found no current concerns. She stated she contacted Mrs. Barber, Dr. Barber's wife and office manager, and spoke with her regarding Dr. Barber's practice and professionalism. Ms. Taxin stated Mrs. Barber confirmed Dr. Barber always has a chaperone available in the office. She stated Mrs. Barber informed her Dr. Barber had some personal problems and made some bad decisions in the past. Ms. Taxin stated she asked Mrs. Barber if Dr. Barber would like the Division to consider termination and Mrs. Barber responded he would but has been informed over the years it would never be terminated, that it was indefinite although at the signing of the Order they understood it to be 5 years. She stated she requested Mrs. Barber to write a letter and Dr. Barber to write a letter requesting termination of his probation, the changes he has made and how he is safe to practice unrestricted. Ms. Taxin stated she received the letters and she read them to the Board. She asked

if the Board believes the public is unsafe if the Board is not monitoring Dr. Barber and if so, they should continue to monitor him.

Dr. Ence made a motion to terminate Dr. Barber's probation.

Dr. Larsen seconded the motion.

Following additional discussion, Dr. Ence, Dr. Larsen, Dr. Radmall and Dr. Lundberg voted in favor of the motion.

Ms. Jolley, Ms. Bateman and Ms. Policelli voted against the motion.

Dr. Beyeler abstained from voting based on his not being familiar with the case.

The motion passed with a simple majority.

Dr. Ence requested Ms. Taxin send a letter or speak to Dr. Barber thanking him for his cooperation throughout his probation.

Ms. Policelli requested Ms. Taxin include the Board's expectations of him.

Is HCG Diet within Dental Scope of Practice

Ms. Taxin read the letter requesting clarification if the HCG Diet is within the Dentist's scope of practice. She explained an injection is given to the patient to take home and administer to themselves to loose weight. Ms. Taxin stated the problem comes when there is some of the injection left over and the patient's are then sharing it with family members and friends. She stated there are issues with lay people administering the injection, proper storing, dispensing and violating DEA and State prescribing laws. She stated she does not believe it is in the scope of practice for Dentists and asked the Board's opinion.

The Board agreed with Ms. Taxin regarding the HCG diet not being within the scope of practice for Dentists.

Ms. Bateman made a motion stating the position of

the Utah Board is the HCG diet is not within the scope of practice for Dentists.

Dr. Ence seconded the motion.

The Board vote was unanimous.

Review WREB Comparison Forms

Ms. Taxin stated a member of her staff has prepared WREB comparison forms for Dentists and for Dental Hygienists to assist the Board when applicants request consideration of their State specific examinations. She stated the WREB forms were used to prepare these forms. She requested the Board to review the forms and make corrections or revisions as needed.

Board members requested minor revisions to the forms.

Dr. Ence asked if Ms. Taxin would call NERB to inform them that Utah will accept their score report if it is printed on the NERB letterhead.

Ms. Taxin responded Nevada uses the ADEX and ADLEX examinations and applications have been received with scores on ADEX or ADLEX letterhead and one on Nevada State letterhead. She stated when she explained that Utah does not accept ADEX, ADLEX or Nevada State examinations the applicant contacted NERB and submitted a score report on NERB letterhead.

WREB Update

Ms. Policelli stated there will be a WREB position open with Dr. Morgan and her leaving the Board. She recommended the Board designate other Board members to attend the San Diego, California, and other meetings. Ms. Policelli informed Board members of the reimbursement for all costs by WREB.

Ms. Taxin reminded the Board of the State/Department/Division policy at this time of no approved travel. She again stated it does not make a difference whether the State pays for the travel or the organization pays for the travel. She stated she has discussed the policy with Beth Cole, WREB, and they understand as there are other States who also have a freeze on travel.

CORRESPONDENCE:

Discus Dental Letter regarding Mall Teeth Whitening/Unlicensed Practice of Dentistry

Ms. Taxin stated she received an article regarding several States taking action against people who are doing the whitening of teeth as it is the unlawful practice of Dentistry. She stated WhiteSmile USA, Jim Valentine sent the Division a letter claiming Georgia is harassing them with accusations that would be felony charges in Utah. She stated she has left Mr. Valentine 2 telephone messages and he has not yet returned her calls.

Ms. Taxin stated the Division is also receiving numerous calls from Cosmetology and Aesthetician licensees who want approval to do teeth whitening. She stated she has said it is not within their scope of practice as it is the opinion of the Dentist and Dental Hygienist Licensing Board that it is the practice of Dentistry. Ms. Taxin recommended the Utah Dental Association consider opening the Law to include teeth whitening under the practice of Dentistry in order to protect the public. She suggested the Law include percentage of solution that would be safe for public use or administration and the higher solution teeth whitening would be considered the practice of Dentistry.

Dr. Radmall stated he turned in a complaint where a patient had been hurt by someone trying to whiten the teeth. He stated he believed the person was informed of the situation by an investigator and told not to continue with the practice, but no action was taken by the Division.

Dr. Beyeler stated people whiten the teeth but do not understand what is happening with the teeth.

Dr. Radmall stated there are advertisements that say the procedure will whiten crowns and it will not. He asked why people do not understand it is the practice of Dentistry.

Dr. Larsen asked if the Board would be liable for law suits if they take a stand and are challenged.

Ms. Taxin responded the Board would have to ask themselves if they are protecting the public or protecting the profession in the practice of Dentistry and be sure they are protecting the public from harm.

Ms. Taxin stated she also received a letter from Marilyn Ward, DDS, Discus Dental. She read the letter to the Board.

The Board agreed with Dr. Ward regarding their own position in recognizing the actual and potential harm from unlicensed procedures and whitening teeth is the practice of Dentistry.

The Board recommended the Association consider opening the Law and making the change.

CRDTS, John C. Cosby, DMD, Letters regarding viability of ADEX/CRDTS Examinations

The Board reviewed Mr. Cosby's letter. **No Board action was taken.**

AADE Advocacy Relations Manual, Updated January 2009

The Board reviewed the AADE updated manual. **No Board action was taken.**

AADE Third Vice-President Information

The Board reviewed the AADE information and noted the information and that the conference will be September 30 to October 1, 2009 in Hawaii. **No Board action was taken.**

NEXT MEETING SCHEDULED FOR:

June 18, 2009

Ms. Taxin commented that the Rules Hearing is schedule for 1:30 pm and the probationers will be scheduled after the Hearing is finished.

ADJOURN:

The time is 5:40 pm and the Board meeting is adjourned.

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 18, 2009
Date Approved

(ss) Anna Policelli, RDH
Chairperson, Utah Dentist & Dental Hygienist
Licensing Board

June 4, 2009
Date Approved

(ss) Noel Taxin
Bureau Manager, Division of Occupational &
Professional Licensing