

**GEORGIA BOARD OF DENTISTRY**  
**Board Meeting**  
**March 14, 2014**  
**2 Peachtree St., N.W., 36<sup>th</sup> Floor**  
**Atlanta, GA**  
**9:30 a.m.**

**The following Board members were present:**

Dr. Logan Nalley  
Ms. Becky Bynum  
Dr. Randy Daniel  
Dr. Tracy Gay  
Dr. Tom Godfrey  
Dr. Steve Holcomb  
Dr. Antwan Treadway  
Dr. Bert Yeargan

**Staff present:**

Tanja Battle, Executive Director  
Bryon Thernes, Asst Attorney General  
Brandi Howell, Bus Operations Specialist

**Visitors:**

Donald Brown, GDA  
Greg Leathers  
Melana McClatchey, GDA  
Wendy Blond, GDHA

**Open Session**

Dr. Nalley established that a quorum was present and called the meeting to order at 9:33 a.m.

**Introduction of Visitors**

Dr. Nalley welcomed the visitors.

**Approval of Minutes**

Dr. Godfrey made a motion to approve the Public Session minutes for the February 7, 2014 meeting and the Public and Executive Session minutes for the February 21, 2014 Conference Call. Dr. Holcomb seconded and the Board voted unanimously in favor of the motion.

**Ratifications**

Dr. Yeargan made a motion to ratify the list of issued licenses. Dr. Holcomb seconded and the Board voted unanimously in favor of the motion.

**Petition for Rule Variance – Sunny D. Patel**

Dr. Holcomb made a motion to deny the rule variance petition. Dr. Yeargan seconded and the Board voted unanimously in favor of the motion.

**Correspondence from Christine Lee**

The Board considered this correspondence inquiring as to whether or not it is legal for a Georgia licensed dental hygienist to buy out a practice from a retiring dentist. Dr. Godfrey made a motion to have Chief Investigator Ryan McNeal find out if Dr. Lee will identify the practice and report back to the Board. Dr. Holcomb seconded and the Board voted unanimously in favor of the motion.

**Correspondence from Jennifer Mantegani-Paul, ProTrainings, LLC**

The Board considered this correspondence requesting ProTrainings to be an approved CPR provider. Discussion was held concerning adding language to Rules 150-3-.08 and 150-5-.04 to state “*or other such agencies approved by the Board*” and developing a policy which allows the Board to maintain a list of approved organizations. Dr. Yeargan made a motion to refer this matter to the Rules Committee for consideration and directed staff to respond to Ms. Mantegani-Paul by stating that she should

resubmit her request in 90 days. Ms. Bynum seconded and the Board voted unanimously in favor of the motion.

#### **Correspondence from James L. Kraemer**

The Board considered this correspondence from Mr. Kraemer regarding ownership of a dental practice. Dr. Godfrey made a motion to respond to Mr. Kraemer by referring him to O.C.G.A. § 43-11-47 for more information regarding this matter and to be advised that the Board is unable to offer any legal advice or opinions regarding this situation. Dr. Holcomb seconded the motion and the Board voted unanimously in favor of the motion.

#### **CE Audit Committee Report**

The Board reconsidered a form containing guidelines created by former board member, Dr. Barry Stacey that was first reviewed at its January 17, 2014 meeting. Dr. Godfrey suggested adding “*Up to 10 hours for Board member service, one hour for each five hours of Georgia Board of Dentistry service provided.*” Dr. Holcomb made a motion to refer this matter to the Rules Committee for consideration. Dr. Treadway seconded and the Board voted unanimously in favor of the motion.

#### **Conscious Sedation/General Anesthesia Committee Report – Dr. Randy Daniel**

Dr. Daniel reported that he, along with Dr. Treadway, met with the Rules Committee to discuss adding the requirement of capnography to the sedation rules. He also reported on adding the requirement of EKG to IV and IM sedation. Dr. Daniel requested the Board consider mailing out notifications to the licensees, in addition to email, if the Board adopts these changes.

#### **Credentialing Committee Report – Dr. Becky Carlon**

No report.

#### **Dental Hygiene Committee Report – Ms. Rebecca Bynum**

Ms. Bynum discussed having received a correspondence from GDHA about an advisory committee based on language found in other states. The proposed committee would be created to provide assistance to the Dental Hygiene Committee as it addresses practice issues for the profession. She stated that she looks forward to an open discussion with the Committee about the proposed language received from GDHA. Dr. Holcomb responded that a lot of thought and effort went into the document created by GDHA and he would like to adequately absorb that information and the impact it may have on the Board.

#### **Examination Committee Report – Dr. Logan Nalley**

Dr. Holcomb reported that the GRU examination is going on right now for dental, which is why Dr. Bennett is not present at today’s meeting. He further reported that Carol Lefebvre is now the Dean of GRU and stated that one of the items discussed is there had been a significant drop in one part of the exam, which is the manikin based portion, at GRU. The Committee looked at what was being done and met with faculty and candidates. As a result, GRU had the highest performance rating that they had in over a year.

#### **Investigative Committee Report – Dr. Bert Yeargan**

No report.

#### **Legislative Committee Report – Dr. Steve Holcomb**

Dr. Holcomb reported on the budget. The House appropriated \$864,000, which is more than what was requested. A conference committee is being convened. Dr. Godfrey asked if anyone could explain why the Board raised its application fees if the Board could not recoup that for operations, and if there was a reduction, would there be a need to reduce the fees at the Board’s discretion. Ms. Battle responded that 1.4 million was proposed and that was for both Dental and Pharmacy. However, that expense and with

our computer system turned out to be 1.7 million. DCH is absorbing that for both Dental and Pharmacy. It is still up in the air about what will be appropriated.

Dr. Holcomb also reported on House Bill 971, House Bill 876, House Bill 739 and House Bill 830.

### **Licensure Overview Committee – Dr. Tracy Gay**

No report.

### **Rules Committee Report – Dr. Tom Godfrey**

Dr. Godfrey reported that capnography will be required in the proposed rules. He stated that it is important to ensure the capnography equipment is not being moved around from location to location. He stated that the sedation applications will be revised to require the applicant provide the serial number for the equipment. He stated that the Committee is continuing to work on the language for the proposed rules and will present them to the Board at a later date.

Dr. Godfrey reported that the Committee is continuing to work on rules regarding unprofessional conduct, fee splitting, and mobile dentistry. The proposed rule regarding fraudulent, misleading, or deceptive advertising has been referred to the Investigative Committee for its input.

Dr. Godfrey made a motion to post Rule 150-12-.02 Bad Checks. Dr. Yeargan seconded and the Board voted unanimously in favor of the motion.

### **150-12-.02 Bad Checks**

(1) It is the policy of the Board of Dentistry to pursue its legal remedies under O.C.G.A. 16-9-20 when a bad check is issued in payment of examination, license or renewal fees, application fees, or similar fees, and to take such other action as is outlined in 150-12 and regulations. Any person issuing a bad check will be subject to the service charge as provided in O.C.G.A. 16-9-20 (a) (2).

(2) If an applicant for licensure by reciprocity, endorsement, comity, or by experience and/or education issues a bad check to cover required licensure fees, such applicant shall not be issued a license until the applicant has paid the appropriate fees and the service charge. If a license is issued prior to determining that the applicant issued a bad check, such license will be deemed to have been issued in error and deemed not current unless the applicant pays the licensure fees and service charge within ten (10) days after the applicant has received a notice mailed by certified or registered mail. The applicant must pay the licensure fees and the service charge by cashier's check or money order.

(3) If a licensee attempts to renew a license by the issuance of a bad check, the license will not be renewed until the licensee pays all fees due including any applicable late renewal fees plus the service charge. If the license is renewed and reissued to the licensee prior to determination that the licensee issued a bad check, the licensee will be notified by certified or registered mail that the renewed license will be deemed not current unless the licensee remits all fees due for renewal plus the service charge within ten (10) days after receipt of notice. The licensee must pay the fees and service charge by cashier's check or money order.

A motion was made by Dr. Godfrey, seconded by Dr. Holcomb, and the Board voted that the formulation and adoption of this new rule does not impose excessive regulatory cost on any licensee and any cost to comply with the proposed rule cannot be reduced by a less expensive alternative that fully accomplishes the objectives of the relevant code sections.

In the same motion, the Board voted that it is not legal or feasible to meet the objectives of the relevant code sections to adopt or implement differing actions for businesses as listed at O.C.G.A. § 50-13-4(a)(3)(A), (B), (C) and (D). The formulation and adoption of this rule will impact every licensee in the same manner and each licensee is independently licensed, owned and operated and dominant in the field of Dentistry.

Dr. Godfrey made a motion to post the following rules:

**GEORGIA STATE BOARD OF DENTISTRY  
CHAPTER 150-15, GENERAL INFORMATION**

**150-15-.01 Scope and Application of These Rules.**

The following Rules govern procedure in "contested cases" as that term is defined in the Georgia Administrative Procedure Act (O.C.G.A. 50-13-2(2)) and which are conducted before the Board of Dentistry. Additional Rules in subsequent chapters may also apply.

**150-15-.02 Docket**

(1) The Executive Director shall keep a book known as a docket, which shall be arranged by a sequential numbering system for each case or other matter and shall show for each case or matter, as permitted by law, all proceedings, actions and filings.

(2) The Executive Director shall keep a docket index by both docket number and alphabetical list of the names of the respondents in all proceedings.

**150-15-.03 Office Hours**

The offices of the Board of Dentistry shall be open from 8:00 a.m. to 5:00 p.m. each weekday, except State legal holidays.

**150-15-.04 Communications**

All communications, including correspondence, motions, and pleadings, shall be filed with the Executive Director, Board of Dentistry, 2 Peachtree Street, 36<sup>th</sup> Floor, Atlanta, GA 30303. Copies shall be furnished to all parties of record, including the attorney representing the State. An original of all correspondence, motions, and pleadings shall be filed with the Executive Director and shall comply in all respects with Rule 150-18-.04.

**150-15-.05 Date of Filing.**

All communications, correspondence, motions and pleadings in any proceedings shall be deemed to be filed or received on the date on which they are actually received and docketed by the Board of Dentistry.

**150-15-.06 Computation of Time**

Computation of any period of time referred to in these rules shall begin with the first day following that on which the act which initiates such period of time occurs. When the last day of the period so computed is a day on which the office of the Board of Dentistry is closed, the period shall run until the end of the following business day. When such period of time, with the intervening Saturdays, Sundays and legal holidays counted, is ten (10) days or less, the said Saturdays, Sundays and legal holidays shall be excluded from the computation; or otherwise such days shall be included in the computation.

**150-15-.07 Extension of Times**

It shall be within the discretion of the Board or its designee to extend, for good cause shown, any time limit prescribed or allowed by these rules. All requests for an extension should be made by a motion in accordance with 150-17-.01 and shall indicate therein whether all parties concur. The Board or its designee shall notify all parties of its action upon the motion. Extension shall be granted only when the Board or its designee is satisfied that good cause has been shown and not otherwise.

**150-15-.08 Signatures**

Every notice, pleading, petition, motion or other document filed by a party, represented by an attorney, shall be signed by at least one attorney of record in his/her individual name. His/her address, e-mail address, telephone number, and representative capacity shall be stated. A party who is not represented

by an attorney shall sign his pleading and state his address, e-mail address, and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him/her that s/he has read the pleading, and that it is not interposed for harassment or delay.

#### **150-15-.09 Ex-parte Communication**

No person not employed by the Board of Dentistry shall communicate *ex-parte* with any member of the Board of Dentistry involved in the decisional process with respect to the merits of a contested case. If any *ex-parte* communication is directed to any person in violation of these rules, the Board or its designee and all other parties shall be immediately informed of the substance of the communication and the circumstances of its receipt; provided, that a request for information with respect to the status of a proceeding shall not be prohibited by this section.

#### **150-15-.10 Petition for Promulgation, Amendment, or Repeal of Rules**

(1) Form of Petition. Each petition for promulgation, amendment or repeal of rules made pursuant to the Georgia Administrative Procedure Act shall be filed with the Board of Dentistry. The petition shall be in writing and shall state:

(a) The name and address of the petitioner;

(b) The full text of the rule requested to be amended or repealed, or the full text of the rule desired to be promulgated;

(c) A statement of the reason such rule should be amended, repealed, or promulgated including a statement of all pertinent existing facts which relate to petitioner's interest in the matter;

(d) Citations of legal authority, if any, which authorize, support, or require the action requested by petition. The petition shall be verified under oath by or in proper behalf of; the petitioner.

(2) Proceeding on Petition. Upon receipt of the petition, the Board of Dentistry shall decide upon the action to be taken. Within thirty days after the next regularly scheduled meeting of the Board, the Board either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making or rule-changing proceedings in accordance with the Georgia Administrative Procedure Act.

## **GEORGIA STATE BOARD OF DENTISTRY CHAPTER 150-16, PLEADINGS**

#### **150-16-.01 Initial Pleading**

(1) The hearing in a contested case shall be commenced by the Board's filing of a notice of hearing directed to the respondent, or respondents.

(2) Every pleading or other paper submitted for filing in a contested case, to the extent possible, shall contain the following:

(a) A title which indicates the nature of the proceeding and the parties involved therein;

(b) The name of the Board;

(c) A short and plain statement of the nature of the pleading (e.g. Answer, Motion for Continuance, etc.);

(d) In addition, the notice of hearing shall, to the extent possible, contain the following:

1. A short and plain statement of the matters asserted or the issues involved;

2. A clear and concise statement of the laws involved;

3. A notice of the rights of the person to whom the notice of hearing is directed;

4. A statement that an answer to the matters asserted is required; and

5. Any other information required by law or deemed appropriate by the Board.

#### **150-16-.02 Answer**

The party to whom a notice of hearing is directed must file with the Board an answer within fourteen (14) days after service of the notice of hearing. All allegations contained in the notice of hearing which are not specifically admitted are deemed denied.

### **150-16-.03 Replies**

A reply to the answer shall not be permitted and any new matters asserted in the answer shall be deemed denied.

### **150-16-.04 Amendments**

Any party, including the Board, may amend any pleading or notice without leave until the eighth day prior to the date set for the hearing on the matter. Thereafter a party may amend his pleadings only by leave of the Board or its designee and leave shall be freely given when justice so requires. If an amendment is made to a notice of hearing, the answer to said amended notice shall be filed within seven (7) days after service of the amended notice, unless otherwise ordered by the Board or its designee.

## **GEORGIA STATE BOARD OF DENTISTRY CHAPTER 150-17, MOTIONS AND PRE-HEARING PROCEDURES**

### **150-17-.01 Motions: Written and Oral**

(1) An application to the Board for an order to take any action or to enter any order shall be made by motion which, unless made during the hearing, shall be made in writing, shall state specifically the grounds therefor, and shall set forth the action or order sought. A copy of all written motions shall be served upon the parties in accordance with Chapter 150-18.

(2) A motion for a continuance or an extension of time shall be ruled upon by the Board or its designee forthwith. All other motions shall be ruled upon by the Board or its designee at the outset of the hearing, after an opportunity for argument by the parties; provided, however, that the Board or its designee may establish a hearing schedule and dispose of motions. The Board or its designee may request briefs in support of or in opposition to any motion.

### **150-17-.02 More Definite Statement**

A motion for more definite statement shall be filed and ruled upon pursuant to 150-17-.01.

### **150-17-.03 General Procedures.**

Proceedings before the Board shall be conducted as expeditiously as possible, with due regard to the rights of the parties. In contested cases before the Board of Dentistry upon issuance of a notice of hearing, the procedures set forth in this chapter and Chapters 150-15 through Chapter 150-24 shall enable the parties to obtain relevant information needed for preparation of the case, to the extent that such disclosure is authorized by law.

### **150-17-.04 Witness Lists and Respondent Statements.**

(1) Should a party seek a list of the names of witnesses, including experts, whom another party expects to call or may call on its behalf, the party seeking the list must communicate the request in writing (by mail, personal service, or electronically) to the other party at least fourteen (14) days prior to the hearing. Such a request must also be filed with the Executive Director, Board of Dentistry, 2 Peachtree Street, 36<sup>th</sup> Floor, Atlanta, GA 30303. The party of whom the information is requested shall, within a reasonable time prior to the commencement of the hearing but at least ten (10) days prior to the hearing, provide such a list to the requester.

(2) The parties may also, within a reasonable period of time prior to the hearing, exchange copies of documents and designate documents already in the possession of the other party which are intended to be introduced as evidence at the hearing. Upon request, the parties shall make available to each other for inspection, copying, testing or sampling any tangible item intended to be introduced as evidence, within a reasonable period of time prior to the hearing. Where a party seeks documents or other evidence already in the possession of the other party which are intended to be introduced as evidence at the hearing, the party seeking the documents must communicate a request for the evidence in writing (by mail, personal service, or electronically) to the other party at least fourteen (14) days prior to the hearing. Such a request must also be filed with the Executive Director, Board of Dentistry, 2 Peachtree

Street, 36<sup>th</sup> Floor, Atlanta, GA 30303. The party of whom the information is requested shall, within a reasonable time prior to the commencement of the hearing but at least ten (10) days prior to the hearing, provide such evidence to the requester or file a motion seeking an order to quash the request.

(3) If a licensee makes a general or specific written request to the Board for exculpatory, favorable, or arguably favorable evidence that is relative to pending allegations concerning the licensee, the Board must furnish the requested information, indicate that no such information exists, or refuse to furnish the information requested prior to a hearing.

(a) The Board is not required to furnish information made confidential by state or federal law, until such requested information has been determined to be exculpatory, favorable, or arguably favorable pursuant to the *in camera* procedure specified in part (b) of this subsection.

(b) Once the Board has furnished exculpatory, favorable, or arguably favorable information, has indicated that no such information exists, or has refused to furnish such information, a licensee may request a prehearing *in camera* inspection of the remainder of the investigative file by the Board or its designee. The Board or its designee shall furnish the licensee with all material that would aid in the licensee's defense that is exculpatory, favorable, or arguably favorable. The Board or its designee shall seal a copy of the entire investigative file in order to preserve it in the event of an appeal.

(4) If a party refuses to or neglects to produce documents, evidence, witness lists or statements in accordance with a request pursuant to 150-17-.04(1) or 150-17-.04(2), the Board or its designee may issue an order compelling production by motion of the requester or on its own motion. Where the party of whom information is requested has filed a motion to quash the request for production pursuant to 150-17-.01 and 150-17-.04(2), the Board or its designee may issue an order to quash the request for production upon good cause shown by the party requesting such an order. If a party subsequently refuses to or neglects to produce the requested materials in spite of an order compelling it to do so, the Board or its designee shall have the same rights and powers given the court under the Georgia Civil Practice Act. The Board or its designee may certify the facts to the Superior Court of Fulton County or any county where the offense is committed for appropriate action, including a finding of contempt. The Board or its designee shall have the power to issue writs of *fieri facias* in order to collect fines imposed for violation of a lawful order of the Board or its designee.

(5) The parties shall be required to confer either in person or by telephone, in reasonable advance of a scheduled hearing date but at least seven (7) days prior to the hearing, in a good-faith attempt to reach an agreement as to the admissibility of any documents or tangible items intended to be offered in evidence for either side. The parties may stipulate as to any matter of fact and such stipulation will satisfy a party's burden of proving the fact alleged. The parties shall be encouraged to reach pre-hearing stipulations which could facilitate adjudication of the case. The Board or its designee, upon its own motion or upon the request of either party, may schedule a pre-hearing conference to hear and rule on motions or other preliminary matters, or otherwise facilitate adjudication of the case.

#### **150-17-.05 Pre-Hearing Discovery**

Except as may be expressly authorized by these Rules or by statute, no other forms of prehearing discovery shall be authorized or permitted including, but not limited to, interrogatories and requests for production of documents and other materials.

## **GEORGIA STATE BOARD OF DENTISTRY CHAPTER 150-18, SERVICE**

#### **150-18-.01 By the Board**

(1) Service of the notice of hearing, initial decision and final order shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the Board.

(2) All other notices, pleadings, orders, motions and other documents shall be personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the Board.

(3) If such materials are served by certified mail or statutory overnight delivery and are returned marked “unclaimed” or “refused” or is otherwise undeliverable, and if the licensee or applicant cannot, after diligent effort, be located, the Executive Director or his or her designee, shall be deemed the agent of service for such licensee or applicant, and service upon the Executive Director or his or her designee shall be deemed service upon the licensee or applicant.

**150-18-.02 Service On All Parties.**

A copy of the answer and all other pleadings, notices, motions, briefs, memoranda and other documents filed by any party with the Executive Director shall be served upon all other parties to the proceeding, including counsel for the Board, by personal delivery or by certified mail, return receipt requested.

**150-18-.03 To Party's Attorney**

Service upon a party's attorney shall be deemed service upon the party.

**150-18-.04 Filing of Pleading**

(1) A party filing a document or other submission with the Board shall simultaneously serve a copy of the document or submission on each party of record. Service shall be by personal delivery, e-mail as an attachment, first-class mail, certified mail, or statutory overnight delivery, return receipt requested.

(2) A pleading subsequent to the Notice of Hearing shall not be entitled to filing unless accompanied by an Acknowledgement of Service from the person served, by his or her authorized agent for service, or by a certificate of service stating the date, place, and manner of service, as well as the name and address of the person(s) served.

**GEORGIA STATE BOARD OF DENTISTRY  
CHAPTER 150-19, INTERVENTION**

**150-19-.01 Intervention**

(1) Any person desiring to intervene pursuant to O.C.G.A. § 50-13-14 shall file a motion in accordance with Rule 150-17-.01 and 150-18-.04.

(a) Such a motion can be made where a statute grants the movant an unconditional right to intervene or when representation of the movant’s interest is or may be inadequate to protect that interest.

(b) Such a motion can also be made where a statute grants the person a conditional right to intervene or where the movant’s claim or defense and the main action have a question of law or fact in common.

(2) The motion shall state therein the specific grounds for seeking intervention. The Board and any other parties shall have fourteen (14) days from the date of service to file a response to such request.

(3) In considering the motion, the Board or its designee shall consider whether the intervention will unduly delay or prejudice the rights of existing parties.

**GEORGIA STATE BOARD OF DENTISTRY  
CHAPTER 150-20, EVIDENCE; SUBPOENAS**

**150-20-.01 Evidence on Hearings**

Unless otherwise provided by these rules, in all hearings, the testimony of witnesses shall be taken orally before the Board or its designee and presentation of all documentary and other evidence shall be done before the Board or its designee.

**150-20-.02 Evidence on Motions**

When a motion is based on facts not appearing of record, the Board or its designee may hear the matter on affidavits presented by the respective parties, but the Board or its designee may direct that the matter be heard wholly or partly on oral testimony.

### **150-20-.03 Objections and Exceptions**

Any objections and exceptions must be made on the record, and at a minimum, must make clear to the Board or its designee the action which s/he desires taken and the grounds therefor.

### **150-20-.04 Subpoenas.**

(1) In contested cases, subpoenas shall be issued without discrimination between public and private parties. At any time after issuance of the Notice of Hearing, and prior to the scheduled date for the hearing, the parties may request the issuance of subpoenas by filing a written request with the Executive Director, in accordance with Rule 150-15-.04, with appropriate service on the opposing party or counsel. Subpoena requests shall state the name and complete address of the person to whom it is directed.

(2) Subpoenas issued pursuant to a request in accordance with Rule 150-20-.04(1) shall not be issued in blank. Every subpoena issued by the Executive Director shall state the name of the Board of Dentistry and the title of the action, and shall command each person to whom it is directed to attend and give testimony at the hearing at a time and place therein specified, or to produce documents for examination at the hearing, or both.

(3) If such a subpoena is directed to any member, investigator, employee, or other agent or representative of the Board, including experts retained by the Board for purposes of the particular case, production of documentary evidence from the Board or investigative file of the applicant or licensee and the taking of testimony at the hearing from such person or persons shall be governed by applicable provisions in the Dental Practice Act,

(3) The party requesting the issuance of the subpoena shall be responsible for serving the same and paying the cost of securing the attendance of witnesses, in the same manner as prescribed by law in civil cases in superior court.

## **GEORGIA STATE BOARD OF DENTISTRY**

### **CHAPTER 150-21, TAKING OF TESTIMONY BY DEPOSITION OR INTERROGATORY**

#### **150-21-.01 Taking of Testimony by Deposition**

(1) At anytime during the course of the proceeding, the Board or its designee may, in his discretion, permit the testimony of a witness to be taken by deposition. Application to take testimony by deposition shall be made in writing and shall be filed with the Executive Director of the Board and served upon all parties to the proceedings, including counsel for the Board.

(2) The application shall state the name and address of the witness, the subject matter concerning which the witness is expected to testify, the date, time and place of the proposed deposition, and the reason why the witness cannot appear and testify before the Board. The Board or its designee may, in his, her or its discretion, allow the application where the circumstances are such that the witness to be deposed cannot appear before the Board without substantial hardship to the deponent or to the parties to the case or that testimony by any other method will unduly delay expeditious completion of the proceedings. An application for the taking of testimony by deposition shall not be allowed if the deposition would result in any undue burden to another party or any undue delay of the proceedings. If the application is allowed, the Board or its designee should give notice of the taking of the testimony by deposition to all parties.

#### **150-21-.02 Conduct of the Deposition**

(1) Examination and cross-examination of the witness shall proceed as would be permitted at the hearing and under those rules of evidence applicable to proceedings conducted pursuant to the Georgia Administrative Procedure Act. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally record the testimony of the witness. The testimony shall either be taken stenographically and shall be transcribed or shall be taken by video deposition. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objections

to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection.

(2) All errors and irregularities in the notice of taking testimony by deposition shall be deemed waived unless written objection thereto is served upon the Board prior to the deposition, unless the errors and irregularities in the notice prevented such advanced writing, in which case, such objection shall be made expeditiously and prior to the beginning of the deposition. Objections to taking testimony by depositions because of disqualification of the officer before whom it is to be taken shall be deemed waived unless made before the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) Objections to the competency of a witness are not waived by failure to make them before or during the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time. Errors and irregularities occurring at the taking of the testimony in the manner of taking the deposition, in the form that the questions are answered, in the oath of affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed or cured if properly presented, shall be deemed waived unless reasonable objection thereto is made at the deposition.

(4) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer taking the testimony are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(5) The transcript of the deposition or the video deposition must be certified by a court reporter in order to be accepted as evidence upon filing with the Board or its designee.

#### **150-21-.03 Taking of Testimony by Interrogatory**

Application to take testimony by interrogatory shall be made and allowed in the same manner as prescribed in Rule 150-21-.01.

#### **150-21-.04 Taking of Testimony by Telephone**

Application to take testimony by telephone shall be made and allowed in the same manner as prescribed in Rule 150-21-.01.

### **GEORGIA STATE BOARD OF DENTISTRY CHAPTER 150-22, HEARINGS**

#### **150-22-.01 Notice of Hearing**

For a hearing held directly before the Board, the Board shall notify all parties of record of the date, time and place of the hearing in the manner as provided by law and these Rules.

#### **150-22-.02 Conduct of the Hearing**

(1) The hearing shall be conducted by the Board or an administrative law judge (ALJ) appointed by the Office of State Administrative Hearings (OSAH).

(2) Duties of the Board or its designee. The Board or its designee shall have the authority to do the following: to administer oaths and affirmations; rule upon offers of proofs; regulate the course of the hearing; set the time and place for continued hearings; fix the time for filing briefs and memoranda; dispose of motions; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the Board or its designee.

(3) Sworn Testimony. All testimony given at the hearing shall be under oath administered by the Board or any person designated by the Board.

(4) Order of Presentation. The State, or in a proper case a moving or complaining party, shall present its evidence or testimony first. Where there is more than one moving or complaining party, the order of presentation shall be at the discretion of the Board. After all of the evidence and testimony of the State, or the moving or complaining party, has been received, all other parties shall be allowed to present their evidence or testimony. All parties, other than the party introducing the testimony, shall be allowed to

cross-examine any witness immediately after his testimony has been received. The State, or the moving or complaining party, shall be allowed to present rebuttal testimony or evidence if it so desires.

**GEORGIA STATE BOARD OF DENTISTRY  
CHAPTER 150-23, CONSOLIDATION**

**150-23-.01 Consolidation**

The Board or its designee upon its own motion, or upon motion by a party or other person joined in the proceeding, may order proceedings involving a common question of law or fact to be consolidated for hearing on any or all of the matters at issue in such proceedings.

**GEORGIA STATE BOARD OF DENTISTRY  
CHAPTER 150-24, BRIEFS AND POST-HEARING PROCEDURE**

**150-24-.01 Briefs**

Briefs may be filed by a party or any interested person either before or during the course of the hearing, or within such time thereafter as the Board or its designee shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

**150-24-.02 Filing of Documents Subsequent to Hearing**

(1) Upon request, the Board or its designee may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of the hearing, such time to be determined by the Board or its designee. If a request for such subsequent filing is granted, the requesting party shall, on or before the date set for filing, send copies of all documents or exhibits which are the subject of the request to all other parties.

(2) Prior to the admission into evidence of any documents or exhibits filed subsequent to the hearing, the opposing party shall have ten (10) days from the date of service of copies of such proposed documents or exhibits to file any objections to the admission of such evidence.

**150-24-.03 Motion to Reopen Hearing**

A party may, at any time prior to the rendering of a final decision by the Board, move that the hearing be reopened for the purpose of receiving new evidence. Such motions shall be filed in accordance with the provisions of Rule 150-17-.01 and shall be granted only for good cause shown. The Board shall notify all parties of its action upon the motion. Notwithstanding the above, the Board may at any time prior to the rendering of a decision, reopen the hearing on its own motion.

**150-24-.04 Review of Initial Decision**

(1) Either the responding party or the Board may seek review of the initial decision of the administrative law judge (ALJ) pursuant to O.C.G.A. §§ 50-13-17(a), 50-13-41(d). If the responding party files a timely motion for review of the initial decision of the ALJ, the responding party may include therein a statement of the reasons for seeking review and alleged errors made by the ALJ in the initial decision. If the Board files a timely order for review of the initial decision on its own motion, it may include in its order the issues to be considered by the Board at the review hearing.

(2) Upon the filing of a timely motion by the responding party seeking review of the initial decision of the ALJ, or upon the filing of a timely order by the Board for review of an initial decision on its own motion, notice of the date and time for the review shall be served on the responding party or counsel for the responding party and counsel for the Board.

(3) The Board may appoint a hearing officer for review, who shall preside over the review proceedings and control the conduct of the review hearing. In acting as the presiding officer, the hearing officer for review shall rule on all procedural and evidentiary questions that arise during the course of the review. At the direction of the Board, the hearing officer for review shall draft the final decision for the Board.

(4) On review, the Board shall have all the powers it would have in making the initial decision, and in its discretion, shall have the power to take additional testimony or remand the case to the ALJ for such purpose, as provided in the Administrative Procedure Act, O.C.G.A. § 50-13-17 and in accordance with

this Rule. Motions, including motions to present additional evidence, shall be filed in accordance with 150-17-.01 and 150-24-.03 and shall be ruled upon within the time period set by the Board but not to exceed thirty (30) days.

(a) Motions to present additional evidence or to remand the case to the ALJ for such purpose shall be granted only if the additional evidence is material, and there was good cause for failing to present such evidence before the ALJ. All motions, including motions for the presentation of additional evidence, shall be ruled on by the Board, prior to oral arguments during the review hearing.

(5) Oral argument up to 30 minutes per side is permitted in the review hearing. Additional time for argument must be requested in writing and docketed at least fourteen (14) days before the date set for the review hearing.

(6) Once the review hearing is concluded, the Board shall deliberate as to the final decision. Neither the hearing officer for review nor the parties nor their counsel shall be present during or participate in the deliberations or voting on the final decision. Provided, however, that during the course of the deliberations the Board may seek or obtain legal advice of its counsel or make an inquiry on the record concerning either procedure or the merits of the case in the presence of all parties.

(a) At the conclusion of the deliberations, the vote and decision of the Board shall be announced in open session, unless the sanction imposed by the decision is made confidential by statute, in which case it shall be announced *in camera* to the responding party and counsel for the parties. The Board may take the matter under advisement and continue the deliberations until a date certain if deemed necessary due to the Board's agenda or the complexity of the issues.

#### **150-24-.05 Rehearing**

A responding party may file a motion for rehearing of a final decision of the Board within ten (10) days after the date of actual service of such final decision on the responding party or responding party's counsel. Such motion shall be in accordance with Rule 150-16-.01 and, in addition, shall include a statement of all matters alleged to have been erroneously decided and, if applicable, a statement as to any newly discovered matters or circumstances that have arisen subsequent to the final decision. The filing of said motion shall not operate as a stay of the final decision of the Board unless so ordered by the Board.

#### **150-24-.06 Appeals of Final Decisions**

All appeals shall be filed in accordance with the Georgia Administrative Procedure Act and must be filed in the Superior Court of Fulton County or superior court of the county of the residence of the petitioner.

Dr. Holcomb seconded and the Board voted unanimously in favor of the motion.

A motion was made by Dr. Holcomb, seconded by Dr. Godfrey, and the Board voted that the formulation and adoption of these proposed rules do not impose excessive regulatory cost on any licensee and any cost to comply with the proposed rules cannot be reduced by a less expensive alternative that fully accomplishes the objectives of the relevant code sections.

In the same motion, the Board voted that it is not legal or feasible to meet the objectives of the relevant code sections to adopt or implement differing actions for businesses as listed at O.C.G.A. § 50-13-4(a)(3)(A), (B), (C) and (D). The formulation and adoption of these rules will impact every licensee in the same manner and each licensee is independently licensed, owned and operated and dominant in the field of Dentistry.

Dr. Godfrey reported that, at a previous meeting, the Board discussed amending Rule 150-5-.02 to add language regarding the number of failed attempts a candidate may have, along with required remediation. Dr. Holcomb stated that he will resend the proposed verbage to Dr. Godfrey.

### **Education Committee Report – Dr. Tom Godfrey**

Dr. Godfrey reported that the new dean at GRU is Dr. Carol Lefebvre.

### **Long Range Planning Committee Report – Dr. Steve Holcomb**

Dr. Holcomb reported that a list of issues with recommendations has been submitted to Dr. Bennett for his review and future discussion.

### **CRDTS Steering Committee – Dr. Logan Nalley**

No report.

### **IP Committee Report – Dr. Richard Bennett**

No report.

### **Executive Director’s Report – Ms. Tanja Battle**

Ms. Battle stated that Dr. Bennett requested she share an organization chart with the Board. She emphasized the additional employees that the Board does not see at meetings on a regular basis.

Ms. Battle reported that she reached out to the American Association of Dental Boards (AADB) and they have submitted a letter regarding what the dues will be. Ms. Battle stated that this expense was not built into the budget; however, she further indicated that the Board has a small amount of retained revenue that can be used for the fees, which are \$2140. Dr. Nalley commented that he feels that membership with the AADB would be a good idea. Dr. Godfrey made a motion to join the AADB. Dr. Holcomb seconded. Discussion was held. Dr. Yeargan asked if members could join individually. Ms. Battle responded that DCH has absorbed the difference between what was required to fund the Board and what was appropriated. As such, she does not want to commit to something without taking a closer look at the budget. Dr. Godfrey amended his motion to read that the Board would join AADB as a state organization. Dr. Holcomb seconded and the Board voted unanimously in favor of the motion. Dr. Yeargan made a motion to request that individual membership be considered after the budget has been reviewed. Dr. Holcomb seconded and the Board voted unanimously in favor of the motion. Dr. Holcomb added that some board members are lifetime members and it would be of no cost to the state.

Ms. Battle reported that we are wrapping up with renewals. She is currently working with the Office of the Inspector General to ensure no one is terminated until staff has had a chance to notify everyone that has any outstanding issues. There are currently 410 dental hygienists and 175 dentists that are “active-renewal pending”, which means that the individual has initiated the renewal process. Dr. Yeargan commended staff for a job well done. Ms. Battle responded that it has certainly been a team effort.

### **Attorney General’s Report – Mr. Bryon Thernes**

Mr. Thernes reported that Dr. Marcia White has filed a Petition for Judicial Review and that Mr. Reagan Dean is still acting on the Board’s behalf regarding this matter.

Mr. Thernes reported that the matter regarding Dr. Dennis Jaffe has been dismissed.

Mr. Thernes reported that a summary suspension was filed and served on Dr. Richard Scott Marsh.

Mr. Thernes presented the following consent order for acceptance:

- Jennifer C. Cope

### **Miscellaneous**

Dr. Holcomb discussed the current workload of the Rules Committee and commended Dr. Godfrey on a job well done.

DH Clinical Examiner Resume: Dr. Godfrey made a motion to refer the resume received for Rachel H. Yeargan to CRDTS for consideration as Deputy Examiner.

Becky Bynum made a motion and Dr. Antwan Treadway seconded and the Board voted to enter into **Executive Session** in accordance with O.C.G.A. §43-1-19(h)(2), §43-11-47(h) and §43-1-2(k) to deliberate and receive information on applications, investigative reports, and the Assistant Attorney General's report. Voting in favor of the motion were those present who included Ms. Becky Bynum, Dr. Randy Daniel, Dr. Tracy Gay, Dr. Tom Godfrey, Dr. Steve Holcomb, Dr. Logan Nalley, Dr. Antwan Treadway, and Dr. Bert Yeargan.

## **Executive Session**

### **Licensure Overview Committee Appointments/Discussion Cases**

- J.M.M.
- M.A.
- K.S.M.
- M.C.N.
- A.M.T.
- T.M.B.
- G.P.

### **Applications**

- A.J.P.
- H.C.L.
- C.C.C.
- J.A.B.
- R.P.L.
- R.J.J.
- M.D.D.
- Z.H.B.
- I.S.
- R.D.M.
- R.K.

### **Investigative Committee Report**

Report presented:

- DENT130123
- DENT110011
- DENT130059
- DENT110204
- DENT120141
- DENT130052
- DENT140104
- DENT120110
- DENT130129
- DENT090198
- DENT130086
- DENT120168
- DENT140053

- DENT140161
- DENT130130
- T.H. & B.W.
- E.S.

**Correspondences**

- Correspondence from R.L.B.
- Correspondence from W.M.T.
- Correspondence from J.G.B.
- Correspondence from J.S.
- Correspondence from S.R.F.
- Correspondence from W.N.C. regarding A.P.
- Correspondence from L.B.
- P.M.
- Correspondence from I.H.

**Executive Director’s Report – Ms. Tanja Battle**

- N.V.C.
- J.C.

Ms. Battle presented the following Voluntary Cease & Desist Order for acceptance:

- P.E.

**Attorney General’s Report – Mr. Bryon Thernes**

The Board received advice from Mr. Thernes regarding ownership of dental practices.

Mr. Thernes presented the following consent order for acceptance:

- K.D. (to be accepted and signed with express permission upon receipt)

**Miscellaneous**

- S.C.
- Georgia Examiners and Deputy Examiners for CRDTS
- DRN Monitoring Agreement
- S.F.

No votes were taken in Executive Session. Dr. Nalley declared the meeting back in Open Session.

<b>Open Session</b>
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Dr. Holcomb made a motion to approve all recommendations based on deliberations in Executive Session as follows:

**Licensure Overview Committee Appointments/Discussion Cases**

- |          |                                |   |
|----------|--------------------------------|---|
| • J.M.M. | Request to terminate probation | Approved request                                |
| • M.A.   | Renewal pending                | Approved for renewal                            |
| • K.S.M. | Renewal pending                | Refer to the Attorney General’s office          |
| • M.C.N. | Renewal pending                | Approved for renewal                            |
| • A.M.T. | Dental Credentials Applicant   | Table pending receipt of additional information |

- T.M.B. Request to terminate probation Request denied
- G.P. Renewal pending Schedule to meet with the Licensure Overview Committee

### Applications

- A.J.P. Dental Hygiene Reinstatement Issue C&D and schedule to meet with the Licensure Overview Committee
- H.C.L. Dental Credentials Applicant Approved application
- C.C.C. Renewal pending Schedule to meet with the Licensure Overview Committee
- J.A.B. Renewal pending Table pending receipt of additional information
- R.P.L. Renewal pending Direct staff to respond to licensee by suggesting the licensee submit an Application for Inactive Status.
- R.J.J. Renewal pending Direct staff to respond to licensee by suggesting the licensee submit an Application for Inactive Status.
- M.D.D. Renewal pending Renew under private consent order
- Z.H.B. Volunteer Applicant Denied application
- I.S. Inactive Status Approved application
- R.D.M. Inactive Status Approved application
- R.K. Dental Exam Application Tabled

### Investigative Committee Report

Recommendations made by the Investigative Committee on January 31, 2014 and February 21, 2014:

<b>Complaint Number</b>	<b>Allegations</b>	<b>Recommendations</b>
DENT130123	Other	Close w/ Letter of Concern
DENT110011	Substandard Work	Refer to the AG
DENT130059	Standard of Care	Refer to the AG
DENT110204	MMPR	Close
DENT120044	MMPR	Close
DENT120141	Standard of Care	Close
DENT130052	Failure to Perform Client Services	Close
DENT140104	Fraud/Misrepresentation	C & D
DENT120110	Quality of Care	Close
DENT130129	MMPR	Close
DENT130129	Failure to Perform Client Services	Letter of Concern to Dentist
DENT090198	Quality of Care	Close
DENT090198	Quality of Care	Letter of Concern to Attorney
DENT130086	Quality of Care	Refer to AG
DENT120168	Substandard Work	Close
DENT140053	Advertising	Refer to AG
DENT140161	Drug Diversion	Refer to AG
DENT130130	Impaired/Other	Refer to AG

- E.S. Directed staff to notify licensee that, based on the documentation presented, it appears he is not in compliance with his consent order and that failure to comply may result in further disciplinary action.

### **Correspondences**

- Correspondence from R.L.B.: Denied request for waiver of application fee.
- Correspondence from W.M.T.: Denied request for waiver of late renewal fee and be allowed to pay renewal fee of \$85.
- Correspondence from J.G.B.: Denied request for waiver or reduction of the late renewal fee.
- Correspondence from J.S.: Viewed correspondence for informational purposes only.
- Correspondence from S.R.F.: Denied request for waiver of the late renewal fee.
- Correspondence from W.N.C. regarding A.P.: Allow A.P. to retake CRDTS examination.
- Correspondence from L.B.: Deny request for release of investigative files.
- P.M.: Renew under private consent order.
- Correspondence from I.H.: Directed staff to respond by stating he would not qualify for licensure.

### **Executive Director's Report – Ms. Tanja Battle**

- N.V.C. Dental Credentials Applicant Refer to the Attorney General's office
- J.C. Dental Credentials Applicant Deny request for an extension to complete OMPE

Ms. Battle presented the following Voluntary Cease & Desist Order for acceptance:

- P.E. Voluntary C&D accepted

### **Attorney General's Report – Mr. Bryon Thernes**

The Board received advice from Mr. Thernes regarding ownership of dental practices. No action taken.

Mr. Thernes presented the following consent order for acceptance:

- K.D. Consent Order to be accepted and signed with express permission upon receipt of the original

### **Miscellaneous**

- S.C. No action taken
- GA Examiners and Deputy Examiners for CRDTS No action taken
- DRN Monitoring Agreement Viewed correspondence for informational purposes only.
- S.F. No action taken

Dr. Godfrey seconded and the Board voted unanimously in favor of the motion.

### **Petition for Rule Variance – Peter Morton**

Dr. Holcomb made a motion to deny the rule variance petition. Dr. Godfrey seconded and the Board voted unanimously in favor of the motion.

### **Approval of Minutes**

Dr. Holcomb made a motion to approve the Executive Session minutes for the February 7, 2014 meeting. Dr. Godfrey seconded and the Board voted unanimously in favor of the motion.

The next scheduled meeting of the Georgia Board of Dentistry will be held on Friday, April 11, 2014, at 9:30 a.m. at the Department of Community Health's office located at 2 Peachtree Street, N.W., 36<sup>th</sup> Floor, Atlanta, GA 30303.

The Board meeting adjourned at 3:50 p.m.

Minutes recorded by Brandi P. Howell, Business Operations Specialist  
Minutes edited by Tanja D. Battle, Executive Director