

Kansas Dental Board
Minutes of August 5, 2011

The Kansas Dental Board met on August 5, 2011, at 9:00 a.m. in Rm 108 of Landon State Office Bldg, Topeka, Kansas.

1. Meeting called to Order: Dr. Glenn Hemberger, DDS, President, called the meeting to order at 9:00 a.m.

2. Members present: Dr. Glenn Hemberger, DDS, President; Dr. Richard Darnall, DDS, Vice-President; Susan Rodgers, RDH, Secretary; Denise Maus, RDH; Dr. Michael Milford, DDS; Dr. Roger Stevens, DDS; and Jim Showalter, public member.

Staff present: Betty Wright, Executive Director; Melissa Graham, Admin. Officer; Mr. Randall Forbes, attorney, Dr. Steven Johnson, DDS investigator.

Absent: Dr. Rogers Stevens, DDS.

3. Approval of Agenda: It was moved (M) and seconded (S) to revise the order of the agenda and provide public forum at a later point in the meeting. The motion passed.

4. Approval of minutes. It was (M) and (S) to approve the May 6, 2011 board minutes with correction of two typographical errors. The motion passed.

5. Report of the President. Dr. Hemberger introduced the newly appointed board member, Dr. Charles Squire, DDS, a periodontist from Wichita.

6. Dr. Brian Jenkins Reconsideration - The Board heard the argument for the reconsideration of the board order decided at the May 6, 2011 meeting regarding Dr. Brian Jenkins. The order had modified the limitation on his license so that he could work for any dentist for a salary only. Mr. Merker had two points in his argument to the board. The first was that the dental board did not have the authority to determine the salary amount or structure of a licensed dentist. Mr. Merker said this was violated when the board limited Dr. Jenkins to work for a salary only. In the second point, Mr. Merker argued that the order should be set aside because the composition of the board did not comply with the statute requiring 6 dentists on the board. Mr. Merker maintained that the board should have had 6 dentists; if there had been 2 more dentists as required the vote may have gone through, but there were 3 dentist's and 3 non-dentists tied, the 4th dentist cast a tiebreaker vote against the motion. Mr. Merker argued that due to the modification Dr. Jenkins was not able to buy the dental practice where he had been an employee; this has severely impacted his work prospects. In addition, Mr. Merker argued that Dr. Jenkins has not committed further violations, and there is not a justification for continued limitations by the board. He asked that the order be set aside and all restrictions lifted.

Randy Forbes argued there is not a legal basis to set aside the order. The board had a quorum of members, there were 7 of 9 possible board members present. The board's vote was valid, and the members' votes are all equal. After describing the series of board orders from 2002 forward, and summarizing the testimony of Dr. Jenkins on May 6, 2011, Mr. Forbes argued that previous orders were not appealed by Dr. Jenkins. He was placed on a limitation to have a salary not based on production in 2009 and he did not appeal that decision. The board held in May 2011 that Dr. Jenkins could work for any dentist without quarterly reports, which was a lesser restriction than he had previously. The board's intent in leaving the salary restriction was

to avoid placing him in a position that could lead to the same problems he had in the past. The meeting was closed for deliberations from 9:30 a.m. to 10:20 a.m. It was (M) and (S) the decision issued on May 20, 2011 will remain and will not be reconsidered until August 2013. The motion passed unanimously.

7. President Report – Dr. Hemberger described the concern that the WREB dental clinical exam does not have a crown preparation, and the CRDTS exam does. Should the board require WREB exam applicants to take a crown and bridge portion of another exam? The issue is tabled until the next meeting when Dr. Stevens is present.

There is a need to discuss what is or is not acceptable for approved continuing education. This will be tabled until the next meeting when Dr. Stevens can be present.

8. Public Forum – Dr. John Fales provided handouts and a discussion regarding the board's recent sanction of the Fifth District Dental Society regarding two 7 hour CE courses: one in 2008 by a comedian, and one in 2010 by a motivational speaker. The board wrote letters to them questioning the dental content of the two courses, and their district secretary said she had provided agendas to the board for the courses. He stated that the speakers are ADA approved and they were suitable topics for dental CE, that the comedian was a psychologist who described in a lighthearted way how to have a better dental office atmosphere, and the motivational speaker was well-known to provide good information for dental office team. Ms. Wright described that she did not get responses to the letters sent to the Fifth District. Dr. Hemberger describes the problem as a failure to know exactly who to contact when addressing the Fifth District Dental Society. The president of the Fifth District, Dr. Nickie Perry stated that they would send the board letters by certified mail in the future. Dr. Fales asked that the Fifth District be allowed to provide CE without requesting board approval. It was (M) and (S) to dismiss sanctions. The motion passed.

Break from 10:55 a.m. to 11:05 a.m.

9. There was discussion regarding a dental group who bills patients an extra fee over and above the dental insurance maximum allowable. These dentists are participating providers with multiple insurance plans and have contracted to accept allowable fees. These dentists claim the right to charge surplus fees due to their superior quality and skill. The patients are asked to sign an agreement stating they understand the higher level of care and agree to pay extra co-payments over and above the agreed to contractual prices. The Board's discussion centered around two points: Is this a misrepresentation to the patient and the insurance companies, thereby placing the dentist in violation of the Practice Act, or is this simply an issue involving an agreed fee between the patient and dentist, with the approval of the insurance company, therefore not an issue for the dental board. Junetta Everett of Delta spoke and said the extra fees are allowed if the patient agrees in writing and is informed of the reason for the extra fee. The issue was tabled.

10. The board discussed a complaint in which a dentist continues to use a previous owner's name in advertising, even though the dentist has been deceased for years. This could be construed as misleading. Dr. Hemberger assigned the Regulatory Review Committee the task of writing a regulation to address this issue.

11. Dr. Hemberger appointed Dr. Charles Squire, Dr. Darnall, and Denise Maus to the Regulatory Review Committee.

12. The board discussed the ADA position that "states considering licensing new categories of allied personnel follow ADA policy and maintain separate examinations for dentists and the allied dental personnel." Since Kansas does not license dental therapists the matter was not discussed.

Meeting was adjourned for lunch 11:52 a.m. and resumed at 12:06 p.m.

13. Dr. Darnall reported that the Investigative Committee has required more time from Dr. Johnson for investigations. Inspections will be done if there is a complaint, and Dr. Johnson will focus on investigations. He will keep track of his hours to see if his contract needs to be changed for next year.

14. Executive Report – Betty Wright reported that 39 dentists, 3 specialists, 87 hygienists, and 6 ECP's were licensed since the last board meeting. The Creighton School of Dentistry is approved as an extern program. In researching the CE hours for CPR courses, we have normally allowed 4 hours for BLS courses, and ACLS courses can be allowed whatever hours were spent in acquiring the certificate. There is a range of 16 hours for the initial course to 8 hours for re-certification.

15. Randall Forbes described the latest developments in the FTC case against the North Carolina Dental Board. The FTC prevailed at the administrative hearing and found that there was not state supervision of the NC Dental board, for two reasons: the dentists on their board are elected by other dentists rather than appointed, and only the dentists on the board voted on the teeth bleaching issue. The case may be appealed.

16. It was (M) and (S) at 12:45 p.m. to go into Executive Session to discuss a matter in litigation with the attorney and to open the meeting at 1:05 p.m. The motion passed. The meeting reopened at 1:05 p.m. and it was (M) and (S) to extend the Executive Session until 1:30 p.m. The motion passed.

The open meeting was resumed at 1:30 p.m.

Next meeting dates: November 4, 2011, Mar 23, May 18, Aug 10, Nov 2, 2012.

It was (M) and (S) to adjourn at 1:32 p.m. The motion passed. The meeting was adjourned.

The following guests were present for the board meeting: Greg Hill, KDA; Dr. Kathy Weno, DDS, KDHE; Dan Murray; Rick Merker; Dr. Brian Jenkins, DDS; Wanda Droege and Junetta Everett, Delta Dental.

 10/13/11
Susan Rodgers, RDH Secretary date