

**Thursday Jan 8, 2009
6:00 PM**

**Administrative Office
Hoover, Alabama**

The Board of Dental Examiners of Alabama met to conduct business. Members present were Drs. McCaffery, DeRosier, Willis, Northcutt and Ms. Chapman. Also present was Stan McAdams, Mary Ann Wilkinson, Peyton Zarzour, and Mr. Joe Wilson, of WARD & WILSON, LLC. Dr. Mahan could not attend.

Dr. McCaffery called the meeting to order at 6:20 PM.

Dr. McCaffery welcomed the following:

Dr. Mike Koslin, Board of Dental Examiners of Alabama Anesthesia Committee Chairman

Dr. Lee Ferguson, President- Alabama Dental Association

Dr. Gaines Thomas, President Elect – ALDA

Wayne McMahan, Executive Director ALDA

Dr. McCaffery reviewed dates currently scheduled:

January 10-11, 20089 ADHP

January 19, 2009 STATE HOLIDAY – Office closed

January 22, 2009 Circuit Court for MONTGOMERY COUNTY, ALABAMA

WHITE SMILE USA, Inc, D'MARKOS, LLC, and Alabama limited liability company, d/b/a/ Randall's

January 23-25, 2009 Southern Conference of Dental Deans and Examiners, Greenbrier, West Virginia

January 29, 2009 Department of Examiners of Public Accounts Annual Training for Board and Commission Members, Montgomery, Alabama

February 5-6, 2009 Board Meeting

Ms. Chapman noted that she would be unavailable January 22 and January 29, 2009.

Notification was received from Mr. John Segrest, Department of Examiners of Public Accounts, requesting a date to schedule the exit conference for audit period 2003-2007; all who have served on the Board during the audit period are encouraged to attend. Ms. Wilkinson was instructed to notify Mr. Segrest of the Board's preference to schedule on February 5, 2009 or February 6, 2009 in conjunction with the next Board meeting.

Alabama Dental Association – Dr. McCaffery asked Dr. Ferguson to report on the final recommendations from the Alabama Dental Association's Board of Trustees and Legislative Council regarding revisions to the Alabama Dental Practice Act. Mr. McMahan provided copies of the first draft of the proposed bill.

Dr. Ferguson stated that after publication of the draft, Dr. Paul Bussman and Dr. Gerry Walker of the Practicing Dentists of Alabama met with him to request the ALDA Executive Committee recommend the following changes to the draft:

1. Delete proposed change on page 26, lines 18 and 19 to Code of Alabama, (1975) § 34-9-18 (a) (18) Unprofessional conduct as defined by rule of the board stating this change had not been discussed or adopted through the Alabama Dental Association process.
2. ADD on page 24, line 10, Code of Alabama, (1975) § 34-9-18 (a)(6) gross negligence, as defined by rule of the board and adopt the format of the definition utilized by the Medical Board for said rule of the board.
3. ADD on page 36, line 20, Code of Alabama, (1975) § 34-9-40, "from a list of two or more.." to the requirement of the submission of a nominee by the Alabama Dental Society.

Dr. McCaffery noted the requested revisions are significant, and asked for clarification of the authority of the ALDA Executive Council to change a decision duly adopted by the Legislative Council and Board of Trustees. Having participated in many of the ALDA meetings held by the Legislative Council and Board of Trustees, Dr. McCaffery stated she was aware that considerable debate on the need to define gross negligence, professional misconduct and the revision to the nomination process had been permitted prior to the vote regarding the ALDA Executive Council's recommendations.

Dr. Thomas and Mr. McMahan acknowledged that once drafted the ALDA Executive Committee was authorized to approve minor changes, and it is up to the Executive Committee to determine what would be minor and within their authority to change.

Dr. Northcutt objected that "unprofessional conduct" was not approved or discussed in any meeting or in any of the bills that were offered in the past. Mr. McMahan stated "unprofessional conduct as defined by rule of the board" was in the 2007 and 2008 bills, including the opposition bills introduced in 2008 by the PDA. By general agreement, the revisions found in all bills with no prior objection, would continue to be offered when the next bill was drafted. Mr. McMahan stated that the ALDA BOT had focused meeting discussions and topics on the portions of the 2008 bills where disagreement existed as was recommended to all parties of interest during meetings with both the Legislature and Sunset Committee.

Dr. Thomas stated that the draft in current form represented the position as voted on by the Alabama Dental Association's Board of Trustees and further considered sufficient opportunity for all issues to be thoroughly discussed had been provided. Only after the draft was completed were the above stated revisions requested.

On motion by Dr. Willis, seconded by Dr Northcutt, the ALDA Executive Committee was requested to revise the legislative draft to read, Code of Alabama, (1975) § 34-9-18 (a) (6) gross negligence as defined by board rule and the Board of Dental Examiners of Alabama define gross negligence by rule.

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye, Ms. Chapman – Aye). Motion carried.

Dr. McCaffery summarized the Boards' position as follows:

1. The majority of the Board disagrees with deleting "unprofessional conduct, as defined by board rule" as a grounds for disciplinary action, however if deleted the majority of the Board

would not have specific objection so long as the provision for a “non-disciplinary administrative action” remains.

2. The Board will define Gross Negligence by rule, regardless of the addition of the language “by rule of the board” to Code of Alabama (1975) § 34-9-18 (a)(6), page 24, line 10.

3. The majority of the Board supports position of the Alabama Dental Association and the Alabama Dental Society regarding nomination as stated on page 35, lines 18-20 “..from a list of dentists...” however does not object if revised to state “..from a list of two or more dentists..”

Dr. McCaffery called for further discussion, recognizing Dr. Lee Chaumoun who had arrived during this discussion.

Dr. Chaumoun stated his objection to the use of the Medical Board definition as a model for the Board of Dental Examiners of Alabama definition, stating he would prefer no definition rather than to have the weak definition as proposed.

Dr. McCaffery thanked all for their participation and requested Dr. Ferguson and Mr. McMahan continue to update the Board regarding the progress of this bill.

Dr. McCaffery recognized Dr. Mike Koslin, Chairman of the Board’s Anesthesia Committee. Dr. Koslin attended at the request of Dr. McCaffery for the purpose of discussing the recently revised policy on the **administration of Botox, dermal fillers and similar products**; he expressed concern with limitations stated in the policy revised at the last meeting. The American Oral and Maxiofacial Society recognizes the shift in dentistry from primarily treating dental conditions and pain to more comprehensive reconstructive restorative procedures, therefore, indicating a strong consideration for the Board’s policy to allow consideration on case by case basis. Evaluation on a case by case basis would permit both the educational qualifications as well as evaluation of the actual patient procedure to be considered. The certification for the administration of these products is readily available to practioners, and the additional training would be consistent with the dentist’s prior dental education

The Board thanked Dr. Koslin for assisting with information on this matter, and will discuss necessary revisions to the recently adopted policy.

Dr McCaffery acknowledged the arrival of Dr. Tom Barnes.

The Board discussed the **American Dental Association House of Delegates Resolution 73 H-2008**, adopted during the 2008 Annual Session. The resolution commits the ADA to supporting the education of the public on the importance of consulting a licensed dentist to determine if whitening/bleaching is an appropriate course of treatment. The Board concurs with this position.

Discussion was held on the request of Ms. Tiffany Rush, **ChoicePoint**, A LexisNexis Company, for all disciplinary actions July 2002 to present for the following stated purpose:

“The licensure data is sold along with data from many other sources to various businesses including government agencies, insurance companies, law enforcement agencies and law offices. The

information is used by these entities for fraud prevention, location of individuals, provider credentialing and individual identification / verification.”

After discussion, the Board requested Dr. McCaffery to respond informing this company that the Alabama Administrative Procedure Act requires the Board to maintain in a separate file all disciplinary matters, and they are welcome to come to the Board office to review. Requested copies will be provided pursuant to Rule 270-X-5.07, Expense Recovery.

Francisco J. Dosol, Surgeon Dentist Doctor from Mexico, requested a work permit as a dentist working under the supervision of an Alabama licensed dentist or as a dental assistant while waiting for validation of his title as awarded from the University of Tamaulipas, Mexico.

On motion by Dr. DeRosier, seconded by Dr. McCaffery, Mr. Wilson was instructed to notify Francisco J. Dosol that a work permit is not required for him to be employed as a dental assistant, however the issuance of an Alabama Dental license requires compliance with Code of Alabama §34-9-10, and specifically Board Rule 270-X-2.03.

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye) Motion carried.

On motion by Ms. Chapman, seconded by Dr. DeRosier, Ms. Wilkinson was requested to secure **out of state travel approval** for members of the Board, the Administrative Secretary and a representative of Ward & Wilson, LLC to attend the following meetings in Chicago, Illinois:

Council of Interstate Testing Agency – April 3-4, 2009

American Association of Dental Examiners - April 5-6, 2009

Additionally, approval is requested for the Administrative Secretary to attend the American Association of Dental Administrators meeting April 5-6, 2009.

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye, Ms. Chapman – Aye). Motion carried.

The Board discussed the request of **Ms. Lorrie Hellier** for an opportunity to meet with members of the Board regarding her opposition to the use of the Sargenti paste. Although invited, she was unable to meet at this time.

On motion by Ms. Chapman, seconded by Dr. DeRosier, the meeting adjourned at 8:40 PM and will reconvene at 8:30 AM, January 9, 2009. Vote 5-0. Motion carried.

Friday January 9, 2009

8:30 AM

The Board of Dental Examiners of Alabama met to conduct business. Members present were Drs. McCaffery, DeRosier, Mahan, Willis, Northcutt and Ms. Chapman. Also present was Sonya Lankford, Stan McAdams, Natalie Virciglio, Joe Wilson, Mary Ann Wilkinson and Peyton Zarzour.

Dr. McCaffery called the meeting to order at 8:30 AM.

On motion by Dr. Mahan, seconded by Dr. Northcutt, based on the information provided by Dr. Koslin, the opinion of Dec 4-5, 2008 is revised to state:

The administration of Botox or Botox-like products and dermal fillers will be evaluated on a case by case basis.

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye). Motion carried.

On motion by Dr. Mahan, seconded by Dr. Willis, the minutes of Dec 4-5, 2008 were approved with corrections.

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye, Ms. Chapman – Aye). Motion carried.

Dr. Mahan presented the financial report through November 2008 noting that account 507 - disciplinary fines reflects a percentage of the fines due to be collected pursuant to Orders that have been already executed between a licensee and the Board . This budget item is not a projection of fines the Board would need to levy to meet the amount stated in the budget.

On motion by Dr. McCaffery, seconded by Dr. DeRosier, the financial report was approved as presented.

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye, Ms. Chapman – Aye). Motion carried.

A motion was made by Dr. DeRosier, seconded by Dr. Willis, for the Board of Dental Examiners of Alabama to retire to executive session based upon the following allowable statutory reasons:

1. Discussion of the general reputation, character and/or professional competence of licensees.
2. A declaration by Board counsel, Joe Wilson, a licensed attorney in the State of Alabama that the executive session is for the purpose of settling pending cases.

Dr. McCaffery announced the time as 9:30 AM and will reconvene the public session at approximately 1:00 PM. Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye, Ms. Chapman – Aye). Motion carried.

Dr. McCaffery reconvened the meeting at 1:00 PM and welcomed Mr. Steve Windom. Mr. Windom has been engaged to assist the Board with legislative and other governmental matters.

Mr. Windom thanked the Board for this opportunity and stated he is looking forward to assisting the Board with the pending legislative matters and Sunset Hearing. Mr. Windom discussed both the general position of the Board as well as the individual members concerns regarding revisions to the Alabama Dental Practice Act. Additionally he reported on various steps that he has initiated to determine the most effective manner to proceed. Dr. McCaffery thanked Mr. Windom for his guidance and requested that he provide an update at the next meeting.

On motion by Dr. DeRosier, seconded by Dr. Willis, upon review of the August 2008 dental licensure examination results, Dr. Kristina Hopkins is granted a license to practice dentistry.

Dr. McCaffery called for the vote, (Dr. McCaffery abstained, Dr. DeRosier – Aye, Dr. Mahan – abstained, Dr. Willis – Aye, Dr. Northcutt – Aye) Motion carried.

On motion by Dr. McCaffery, seconded by Dr. Mahan, the minutes of December 10, 2008 were approved. Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – No, Dr. Northcutt – Not present for the vote, Ms. Chapman - Aye). Motion carried.

A motion was made by Dr. DeRosier, seconded by Dr. Mahan, for the Board of Dental Examiners of Alabama to retire to executive session based upon the following allowable statutory reasons:

1. Discussion of the general reputation, character and/or professional competence of licensees.
2. A declaration by Board counsel, Joe Wilson, a licensed attorney in the State of Alabama that the executive session is for the purpose of settling pending cases.

Dr. McCaffery announced the time as 3:00 PM and will reconvene the public session at approximately 4:00 PM. Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – not present for the vote, Ms. Chapman – Aye). Motion carried.

Dr. McCaffery reconvened the meeting at 4:15 PM.

On motion by Dr. Mahan, seconded by Dr. DeRosier, Mr. Wilson was instructed to issue a Notice of Hearing for the following:

2007-130

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye). Motion carried.

On motion by Dr. Willis, seconded by Dr. DeRosier, Ms. Wilkinson was instructed to notify the following complainant and dentist that the matters raised are **outside the jurisdiction** of the Board and the complainant may wish to pursue the complaint through the Alabama Dental Associations' Peer review process.

2007-48

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye). Motion carried.

On motion by Dr. McCaffery, seconded by Dr. DeRosier, there is **no evidence to sustain a violation of the Alabama Dental Practice Act** in connection with the complaints against the following dentists and the Board instructed Mr. Wilson was requested to notify both the dentist and the complainant of this decision.

2006-87

2007-141

2007-147

2007-162

2008-05

2008-118

2008-126

2008-113

2005-192

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye). Motion carried.

On motion by Dr. DeRosier, seconded by Dr. Willis, the following cases are **closed with no further action**.

2008-115

2008-68

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye). Motion carried.

On motion by Dr. Northcutt, seconded by Dr. Willis, Ms. Wilkinson was instructed to issue a **letter of concern**:

2008-71

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye). Motion carried.

On motion by Dr. DeRosier, seconded by Dr. Willis, Mr. Wilson was instructed to request a **letter of explanation** from the following resulting from complaints received.

2008-143

2008-144

2008-145

2007-113

2008-124

2nd request:

2007-9

2008-11

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – Aye, Dr. Northcutt – Aye). Motion carried.

The following complaints, after review by all Board members, were placed under investigation. Board members, as listed, were assigned to review investigative findings.

2008-114 Dr. Northcutt

2007-108 Dr. Mahan

2008-31 Dr. Mahan

2007-78 Dr. McCaffery

2008-74 Dr. McCaffery

2006-129 Dr. Willis

2005-188 Dr. Willis

2007-151 Dr. Willis

2007-157 Dr. Willis

On motion by Dr. Mahan, seconded by Dr. DeRosier, Ms. Wilkinson was requested to initiate the rule making process to adopt this definition of Code of AL 34-9-18(a)(6) gross negligence.

Gross negligence shall mean the failure to do that which a reasonably prudent dentist and/or dental hygienist (practitioner) would have done under the same or similar circumstances, or the doing of that which a reasonably prudent practitioner would not have done under the same or similar circumstances. Gross negligence is the conscious doing of an act or the omission of some duty to act with a conscious disregard of known conditions of danger or with careless and reckless indifference to the consequences of such act or omission. For the purpose of this rule the existence of negligence or gross negligence may be established without proof of actual injury or harm to the patient, provided that the act or omission complained of created a substantial risk of harm to the health and well being of the patient which risk was known or should have been known to a reasonably prudent practitioner and which was not justified by the expected benefits to the patient from the act or omission.

Dr. McCaffery called for the vote. (Dr. McCaffery – Aye, Dr. DeRosier – Aye, Dr. Mahan – Aye, Dr. Willis – No, Dr. Northcutt – No, Ms. Chapman - Aye). Motion carried.

On motion by Dr. Mahan, seconded by Dr. Mahan, the meeting was adjourned at 4:45 PM. Vote 6-0. Motion carried.

Respectfully submitted,

S. Michael Mahan, Jr.

Secretary - treasurer

Approved:

Submitted by: Mary Ann Wilkinson