

December 10, 2008
3:00 PM

Administrative Office
Hoover, Alabama

The Board of Dental Examiners of Alabama met to conduct business.

As authorized in the minutes of October 2-3, 2008 the following past members of the Board of Dental Examiners of Alabama were present:

Dr. Kathy Jefferson

Dr. Clyde Yarbrough

Dr. Charles Smith

Dr. Jerome Scales

Dr. Ken Rogers

Also present was Mr. J. Matt Bledsoe, Assistant Attorney General for the State of Alabama, Stan McAdams, Mary Ann Wilkinson, and Peyton Zarzour.

Dr. Jefferson, as most recent past president, called the meeting to order at 3:00 PM and turned the meeting over to Mr. Bledsoe.

Mr. Bledsoe, stated the purpose of this meeting was to establish probable cause regarding several complaints received by his office concerning a licensee who is also an elected member of the Board of Dental Examiners of Alabama. He thanked the members for agreeing to assist his office and the Board of Dental Examiners of Alabama in this matter. Mr. Bledsoe further advised for the purposes of this meeting a chairman would need to be elected.

On motion by Dr. Scales, seconded by Dr. Smith, Dr. Jefferson was nominated as chairman. Vote 5-0. Motion carried.

Mr. Bledsoe recognized Dr. David Northcutt, elected and sworn in as a member of the Board of Dental Examiners after to motion in October was made, who attends this meeting as a public observer.

Dr. Northcutt asked to make a statement for the record. As the only current Board member in attendance, he stated his opposition to the way the meeting was being held to address this matter. In his opinion there was no provision of the Alabama Dental Practice Act to call the meeting to order, however acknowledged that there was a provision for a past board member to serve for hearings and examinations.

In Dr. Northcutt's opinion, Dr. Butch Busby acted unilaterally, by sending these complaints to the Attorney General's office without having this matter reviewed and voted on by the elected members of the Board of Dental Examiners of Alabama. Most concerning to Dr. Northcutt was that after his election to the Board, he did not vote to be recused, yet has been excluded from consideration of this matter.

Mr. Bledsoe referred once again to the minutes of October 2-3, 2008 stating that Dr. Northcutt was sworn in at the conclusion of the October meeting, thus the motion which was passed prior to his election is a valid motion.

Mr. Bledsoe asked the designated members if anyone had knowledge about the complaints to be discussed at this meeting. All members of the Board stated that they had no knowledge of any complaints currently before the Board of Dental Examiners or his office.

Dr. Smith asked Mr. Bledsoe, before proceeding, to explain under what authority, as past members, are they legally empaneled to act on the matters that would be presented. Mr. Bledsoe referenced Code of Alabama, (1975) § 34-9-41:

“...Three members of the Board shall constitute a quorum for penalties outlined in section 34-9-18 and examinations of licensure, five members of the Board shall be present. In conducting examination or hearings involving any of the penalties outlined in section 34-9-18, a majority of the Board may appoint any former member of the Board and such other licensed practicing dentist who for such purposes shall have all the powers and privileges of such office as a regular Board member possesses. ...”

Mr. Bledsoe stated the Board had a quorum when they voted on the motion October 2-3, 2008, whereby notification of recusal of any current member allowed for a past member of the Board of Dental Examiners of Alabama to fill any vacancy. Those minutes were approved by unanimous consent at the Board's meeting November 6-7, 2008. All rights, duties and obligations of a duly elected member of the Board of Dental Examiners of Alabama are applicable concerning the matters addressed at this meeting.

With no further questions, Mr. Bledsoe proceeded to inform the Board that three types of complaints that were received involving this licensee and that the complaints were filed by more than one person.

The first alleges several violations of the Code of Alabama, (1975) § 34-9-18, the second alleges several advertising violation pursuant to Rule 270-X-4.08 involving a website as printed on March 12, 2008, the third relates to patient satisfaction.

Mr. Bledsoe discussed all allegations including recommendations for the Board to consider.

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

A declaration by Mr. J. Matt Bledsoe, Assistant Attorney General, a licensed attorney in the State of Alabama that the executive session is for the purpose of settling pending cases.

Dr. Jefferson called for the vote. (Dr. Jefferson – Aye, Dr. Yarbrough – Aye, Dr. Smith – Aye, Dr. Scales – Aye, Dr. Rogers- Aye.) Motion carried.

Dr. Jefferson stated the time as 5:45 PM and that the public session would reconvene at approximately 6:00 PM.

Dr. Jefferson reconvened the public session at 6:05 P.M.

On motion by Dr. Jefferson, seconded by Dr. Yarbrough, the following complaint resolutions were recommended for the complaints 2007-82 (a) and 2007-82 (b):

- 1) 2007- 82 (a) - A letter of concern should be issued for each allegations, which if true, would be a violation of the Alabama Dental Practice Act.
- 2) 2007-82 (a) - Probable cause was found regarding advertising violations. Mr. Bledsoe is authorized to accept a consent agreement to include a fine consistent with the average fine levied for an advertising violation, specifically three counts, and proof of compliance with the advertising regulations as stated in the Alabama Dental Practice Act OR issue a notice of hearing if the licensee requests.
- 3) 2007-82 (b) - The two patient complaints are outside the jurisdiction of the Board, however it was recommended a letter of apology be sent regarding the first complaint and an agreement to refund fees to the patient OR participate in the Alabama Dental Associations' Peer Review for the second.

Dr. Jefferson called for the vote. (Dr. Jefferson –Aye, Dr. Yarbrough – Aye, Dr. Smith – Aye, Dr. Scales – Aye, Dr. Rogers- Aye.) Motion carried.

By unanimous consent the meeting was adjourned at 6:15 PM.

Respectfully submitted,



Kathy L. Jefferson

Past President and Chairman

Approved:

Submitted by: Mary Ann Wilkinson