DENTAL HYGIENE COMMITEE

OPEN SESSION MINUTES
January 28, 2016
Conference Room
400 S.W. 8th St., Suite D
Des Moines, Iowa

Committee Members	**January 28, 2016**
Mary C. Kelly, R.D.H.	Present
Nancy A. Slach, R.D.H.	Present
Thomas M. Jeneary, D.D.S.	Present

Staff Members
Jill Stuecker, Phil McCollum, Christel Braness, David Schultz, Dee Ann Argo, Janet Arjes

Attorney General's Office
Sara Scott, Assistant Attorney General

I. CALL TO ORDER FOR JANUARY 28, 2016

Ms. Kelly called the meeting of the Dental Hygiene Committee to order at 9:00 a.m. on Thursday, January 28, 2016. A quorum was established with all members present.

Roll Call:

Member	Kelly	Slach	Jeneary
Present	x	x	x
Absent			

II. 1st OPPORTUNITY FOR PUBLIC COMMENT

Ms. Kelly asked Ms. Stuecker to introduce, David Schultz, the Board's new investigator. Mr. Schultz came from the Iowa Board of Medicine, and has an extensive history in law enforcement.

Ms. Kelly asked everyone to introduce themselves, and allowed the opportunity for public comment.

Ms. Boge commented on the Iowa Dental Hygienists' Association bill. Ms. Boge stated that she would be personally affected by this. When Ms. Boge left private practice, she no longer had a

dentist to provide supervision for some of the educational services for which she used to volunteer her time. Ms. Boge recommended her support for the proposed legislation as it would allow dental hygienists to volunteer within their communities.

III. APPROVAL OF OPEN SESSION MINUTES

- *October 22, 2015 – Quarterly Meeting Minutes*

❖ MOVED by SLACH, SECONDED by JENEARY, to APPROVE the minutes as submitted. Motion APPROVED unanimously.

IV. EXECUTIVE DIRECTOR'S REPORT

Ms. Stuecker stated that a report with some basic licensure data has been put together and was available for review.

V. LEGAL REPORT

Ms. Scott stated that she did not have anything to report.

VI. ADMINISTRATIVE RULES/ADMINISTRATIVE RULE WAIVERS

- *Vote on Adopted and Filed – Iowa Administrative Code 650—Chapter 13, "Retired Volunteer Dentist and Dental Hygiene License"*

Mr. McCollum provided an overview of the rulemaking process of the proposed rules. To date, comments have not been received. If approved by the Board, the rules could be filed with a possible effective date of April 6, 2016. Changes have not been made since the Notice of Intended Action was approved by the Board.

❖ MOVED by KELLY, SECONDED by SLACH, to RECOMMEND APPROVAL of the proposed rules as drafted. Motion APPROVED unanimously.

- *Vote on Notice of Intended Action – Iowa Administrative Code 650—Chapter 10, Students Enrolled in Dental Hygiene Programs*

Mr. McCollum reported that this was submitted as a Notice of Intended Action. The recommended changes would better clarify supervision requirements for educational programs. Clinical practice completed on fellow students would require direct supervision by a licensed faculty member whether that be a dental hygienist or a dentist; clinical skills completed on members of the public would require general supervision by a licensed dentist; and local anesthesia and nitrous oxide would require direct supervision by a licensed dentist.

There was some discussion about the language used in the proposal. Mr. McCollum clarified the reasons for the proposed changes.

- ❖ MOVED by KELLY, SECONDED by SLACH, to RECOMMEND APPROVAL of the Notice of Intended Action as drafted. Motion APPROVED unanimously.

- *Rule Waiver Request – SuzAnne Mahrt, R.D.H. – Iowa Administrative Code 650—10.4, "Unauthorized Practice of a Dental Hygienist"*

Ms. Stuecker reported that this was a request from a dental hygienist who was requesting a waiver of the rules so that she would be allowed to own a dental practice in Iowa, and also to be allowed to work as an employee in that practice. Specifically, Ms. Mahrt was interested in purchasing the practice from the dentist who currently employed and supervised her. The dentist would continue to practice and provide supervision to her if the rule waiver were approved in full.

Ms. Stuecker provided an overview of Iowa Administrative Code 650—10.4, which addresses this in rule. The rule has been interpreted to mean that a dental hygienist cannot own a dental practice, and also that the dental hygienist may not practice under the supervision of a dentist who were employed by her. There are two issues for consideration: ownership, and supervision by a dentist who would be an employee of said hygienist.

Ms. Stuecker reported that there was disparity with this rule. Iowa Administrative Code 650 and Iowa law make no other prohibition against ownership of dental practices. Staff was aware of some instances wherein dental assistants have owned practices in Iowa.

Dr. Jeneary asked Ms. Scott to weigh in on this since the rule appears to clearly prohibit this. Ms. Scott stated that Ms. Mahrt's attorney has worked with the Board in making this request.

Ms. Kelly stated that almost anyone, apart from dental hygienists, would be allowed to own a practice; therefore, Ms. Kelly was in favor of approving the waiver as requested.

Dr. Jeneary was opposed to approval due to the language of the current rule. Ms. Scott clarified that Ms. Mahrt is asking for an exception to the rule. Ms. Scott went over the requirements for a rule waiver. Ms. Scott stated that this rule waiver would apply only to Ms. Mahrt. Dr. Jeneary was concerned about whether this would set a precedent that would affect the Board in future. Ms. Scott stated that this decision could be referred to with future requests.

Ms. Scott stated that if a waiver were granted, conditions can be set to limit the scope of the waiver request. Mr. McCollum stated that there are two components to this request; therefore, the waiver could be approved to allow her to own the practice, and yet prohibit her from practicing there since she may be able to exercise undue influence over the dentist if there were a concern about that. Mr. McCollum stated that, ultimately, the dentist would still be responsible for what occurred within the practice. Mr. McCollum provided an overview of other non-licensees who currently own dental practices.

Ms. Slach stated that it would be Ms. Mahrt and her husband who purchase the practice. However, Ms. Mahrt's husband is not a licensee. Mr. McCollum noted that if Ms. Mahrt's hygiene license were to lapse, she could legally purchase the practice.

Ms. Slach stated that she does not see the harm in approving the request.

There was some discussion as to whether the waiver could be restricted to ownership, and bar her from practicing there.

Ms. Kelly asked about the concerns with restriction to trade, and whether the Federal Trade Commission could take issue with this limitation. Ms. Scott stated that there could be some concern there.

- ❖ MOVED by KELLY, SECONDED by SLACH, to RECOMMEND APPROVAL of the waiver as requested, allowing the ownership of the practice and practice as a dental hygienist within the practice. Motion APPROVED, 2-1. Dr. Jeneary voted against the motion.

VII. OTHER BUSINESS

- *Discussion and Vote on IDHA Bill*

Mr. Cope reported that this bill was introduced to address a concern that arises when there are dental hygienists that do not have a current relationship with a supervising dentist to provide certain services within their community, specifically educational services and oral screenings.

Mr. Cope reported that the proposed legislation would exempt supervision requirements for dental hygienists when providing educational services, and oral screenings. Referral to a licensed dentist would be required if a screening were conducted. The proposed legislation would define educational and oral screening services. Mr. Cope indicated that, for the most part, the language was taken from Iowa Administrative Code 650. The definition for oral screening differed due to some of the equipment requirements, and other considerations.

Dr. Jeneary was not opposed to the educational services; however, he had concerns about the screening services since these are more diagnostic in nature. Ms. Stuecker stated that there has been confusion noted by board staff previously, regarding the difference between an oral screening and an exam. There was additional discussion about ways that might address Dr. Jeneary's concern. Mr. McCollum provided some example language about how to limit the scope of the screening services. Ms. Kelly was not opposed to restricting this given that there would not be any supervision by a dentist.

Dr. Fuller asked about the impact on public health supervision agreements. Ms. Kelly stated that public health supervision agreements currently cover educational services and other services such as sealants and fluoride varnish, which could not be provided under this language. Ms. Kelly believed there was still a place for public health supervision agreements. Ms. Stuecker asked Dr. Russell if he believed there would be an impact to public health supervision. Dr. Russell did not believe there would be an impact.

Ms. Stuecker also suggested adding definitions in chapter 1 of Iowa Administrative Code 650 to further clarify these services. Mr. McCollum stated that it would be a good idea. Mr. McCollum

knows that there will be questions about what would be allowed and what could be billed. Mr. Cope believed that most dental hygienists would volunteer their time for these services. Mr. Cope thought that the proposed language addition would likely not be an issue; though, the Iowa Dental Hygienists' Association would have to review this further.

- ❖ MOVED by KELLY, SECONDED by JENEARY, to RECOMMEND APPROVAL of the educational component of the Iowa Dental Hygienists' Association bill. Motion APPROVED unanimously.

- ❖ MOVED by JENEARY, SECONDED by SLACH, to RECOMMEND APPROVAL of the oral screening component provided that language is added to clarify what an oral inspection is not (i.e. not a diagnosis). Motion APPROVED unanimously.

- ▪ *Discussion on Silver Diamine Fluoride*

Ms. Kelly asked Dr. Russell to explain silver diamine fluoride. Dr. Russell stated that it is a mixture of silver nitrate and fluoride. The application of silver diamine fluoride is intended as an intermediary measure to limit decay. Ms. Kelly stated that this is particularly useful for children and the elderly, who may have limited access to dental care.

Ms. Kelly reported that the FDA has approved silver diamine fluoride for tooth sensitivity. The CD-10 coding for the application of silver diamine fluoride is for a caries-arresting medicament. Dental hygienists are allowed to apply medicaments as part of the scope of practice. The fluoride content is slightly higher than fluoride varnish. It was noted that there are things to be aware of when using this. For example, the application of silver diamine fluoride can turn the tooth black. Though, Dr. Russell stated that new formulations do not discolor the tooth the way some of the older formulations did.

Ms. Kelly believed that the application of silver diamine fluoride by dental hygienists would be allowed under general supervision. Ms. Kelly reported that, currently, application of fluoride would be allowed under public health supervision. For the time being, it did not appear that the application of silver diamine fluoride would be allowed under public health supervision.

Mr. McCollum asked about whether this would replace fluoride varnish. If not, then it would require a diagnosis prior to application, and a prescription would likely be required. Ms. Kelly agreed that a diagnosis would likely be required prior to application; though, prescription may not be an issue as this is considered a medicament, which falls under the scope of practice for dental hygienists. Ms. Stuecker made clear that this is a preliminary conversation, and the question of whether or not this is a permissible medicament in a public health setting would need to be further discussed by the Board. Based on current information, Ms. Stuecker stated that the use of silver diamine fluoride is not permissible in a public health setting.

- ▪ *Discussion and Vote on the Definition of Ongoing Practice in the Administration of Local Anesthesia in Another State – Iowa Administrative Code 650—11.7(1)c*

Ms. Braness provided an overview of the inquiry. The Board has recently received some applications wherein practitioners from out-of-state had administered local anesthesia in private practice following graduation; however, for a number of reasons, there was a lapse in their administration prior to application. Upon application in Iowa, it was unclear to staff what qualified as "ongoing practice" in the administration of local anesthesia. The committee was asked to weigh in on this.

Ms. Lori Brown stated that it may be helpful to require the same standard as is required for reinstatement of a lapsed permit. Ms. Braness reported that current rules allow reinstatement up to two years after a local anesthesia permit lapses.

The committee agreed with that standard for the purposes of ongoing practice. Ms. Braness asked if there was minimum amount of time wherein a dental hygienist would need to demonstrate administration of local anesthesia following graduation from school. The committee members stated that there would not need to be a minimum period of administration so long as they could document administration of local anesthesia in private practice.

- *Discussion on Level 2 Expanded Function Training*

Due to time constraints, Ms. Kelly stated that this would be discussed at the full meeting of the Board.

- *Report from Nancy Slach on CODA Site Visit*

Ms. Slach assisted with the CODA site visit at Indian Hills Community College. Ms. Slach stated that there was limited information to report as much of the information related to the CODA visits is confidential. This program is intended to be a one plus one program. Attendees of the program will complete one year of dental assisting education and then complete one year of dental hygiene education. The program is approved by the ADA. Ms. Slach believed that the new program would begin in the fall.

Ms. Kelly asked about what functions would be taught given that CODA requires that instruction be inclusive of the functions that are allowed in the state. Ms. Slach indicated that she had suggested that they teach to that standard.

VIII. 2nd OPPORTUNITY FOR PUBLIC COMMENT

Ms. Kelly allowed the opportunity for public comment.

No comments were received.

IX. CLOSED SESSION

- MOVED by JENEARY, SECONDED by SLACH, to go into closed session in compliance with the following requirements:

Section 21.5(1)(a) for closed session minutes "to review or discuss records which are required or authorized by state or federal law to be kept confidential…", specifically to review or discuss information that is confidential under Iowa Code § 21.5(4).

Section 21.5(1)(d) for consideration of statement of charges, settlement agreement and final order to initiate licensee disciplinary investigations or proceedings, and Iowa code § 21.5(1)(f) to discuss the decision to be rendered in a contested case.

Section 21.5(1)(d) for a complaint, to discuss whether to initiate licensee disciplinary investigations or proceedings and pursuant to Iowa Code § 21.5(1)(a) to review or discuss records which are required or authorized by state or federal law to be kept confidential, specifically information that is confidential under Iowa Code § 272C.6(4).

Roll Call:

Member	Kelly	Slach	Jeneary
Yes	x	x	x
No			
Absent			

Motion APPROVED by ROLL CALL.

- The Dental Hygiene Committee convened in closed session at 10:14 a.m.

RECONVENE IN OPEN SESSION

- MOVED by JENEARY, SECONDED by SLACH, to return to open session. Motion APPROVED unanimously.

- The Dental Hygiene Committee reconvened in open session at 10:24 a.m.

X. ACTION ON CLOSED SESSION ITEMS

- MOVED by JENEARY, SECONDED by SLACH, to APPROVE the closed session minutes as submitted. Motion APPROVED unanimously.

- MOVED by KELLY, SECONDED by JENEARY, to CLOSE complaint #15-0103 without action. Motion APPROVED unanimously.

- MOVED by KELLY, SECONDED by JENEARY, to CLOSE complaint #15-0166 without action. Motion APPROVED unanimously.

XI. ADJOURN

- MOVED by JENEARY, SECONDED by SLACH, to ADJOURN. Motion APPROVED unanimously.

The meeting of the Dental Hygiene Committee adjourned at 10:25 a.m. on January 28, 2016.

NEXT MEETING OF THE COMMITTEE

The next meeting of the Dental Hygiene Committee is scheduled for April 28, 2016, in Des Moines, Iowa.

These minutes are respectfully submitted by Christel Braness, Program Planner 2, Iowa Dental Board.