



# STATE OF IOWA

## IOWA DENTAL BOARD

TERRY E. BRANSTAD, GOVERNOR  
KIM REYNOLDS, LT. GOVERNOR

PHIL MCCOLLUM  
INTERIM DIRECTOR

### IOWA DENTAL BOARD

#### AGENDA

October 31, 2014

**Location:** Iowa Dental Board, 400 SW 8<sup>th</sup> St., Suite D, Des Moines, Iowa

**Members:** *Steve Bradley, D.D.S., Board Chair; Steven Fuller, D.D.S., Board Vice Chair; Matthew McCullough, D.D.S., Board Secretary; Kaaren Vargas, D.D.S.; Tom Jeneary, D.D.S.; Mary Kelly, R.D.H.; Nancy Slach, R.D.H.; Diane Meier, Public Member; Lori Elmitt, Public Member*

**Friday, October 31, 2014**

#### **OPEN SESSION**

2:00 p.m.

**I. CALL MEETING TO ORDER – ROLL CALL**

**II. EXECUTIVE DIRECTOR SEARCH\***

\* Pursuant to Iowa Code section 21.5(1)(i), this portion of the meeting will be held in closed session at the request of the candidates.

4:15 p.m.

**III. 1<sup>st</sup> OPPORTUNITY FOR PUBLIC COMMENT**

**IV. OTHER BUSINESS**

- a. Request to Include Correctional Facilities in Public Health Supervision Locations

**V. LEGISLATIVE UPDATE**

- a. Temporary Permits for Retired Dentists

**VI. APPLICATIONS FOR LICENSURE/REGISTRATION & OTHER REQUESTS\*\***

- a. Pending Licensure/Registration Applications\*\*  
i. David C. Reff, D.D.S.

**VII. 2<sup>nd</sup> OPPORTUNITY FOR PUBLIC COMMENT**

**VIII. CLOSED SESSION\*\***

**IX. ACTION, IF ANY ON CLOSED SESSION ITEMS**

- a. Licensure/Registration Applications
- b. Statement(s) of Charges
- c. Combined Statement(s) of Charges, Settlement Agreement(s) and Final Order(s)
- d. Settlement Agreement(s)
- e. Final Hearing Decisions
- f. Final Action on Non-Public Cases Left Open
- g. Final Action on Non-Public Cases Closed
- h. Other Closes Session Items

**X. ADJOURN**

**NEXT QUARTERLY MEETING: January 22-23, 2015**

If you require the assistance of auxiliary aids or services to participate in or attend the meeting because of a disability, please call the office of the Board at 515-281-5157.

\* Pursuant to Iowa Code section 21.5(1)(i), this portion of the meeting will be held in closed session at the request of the candidates.

\*\*These matters may constitute a sufficient basis for the board to consider a closed session under the provisions of section 21.5(1), (a), (c), (d), (f), (g), and (h) of the 2013 Code of Iowa. These sections provide that a governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting to review or discuss records which are required or authorized by state or federal law to be kept confidential, to discuss whether to initiate licensee disciplinary investigations or proceedings, and to discuss the decision to be rendered in a contested case conducted according to the provisions of Iowa Code Chapter 17A.

October 24, 2014

*direct phone:* 515-242-2402

*direct fax:* 515-323-8502

*email:* freed@brownwinick.com

**VIA E-MAIL: Phil.McCollum@iowa.gov**

Phil McCollum  
Interim Director  
Iowa Dental Board  
400 SW 8<sup>th</sup> Street, Suite D  
Des Moines, Iowa 50309-4687

Re: Expansion of Public Health Settings to Include Correctional Facilities

Dear Mr. McCollum:

This firm serves as counsel to the Iowa Dental Association (the "Association"). It has come to the attention of the Association that during its meeting on Friday, October 17, 2014, the Iowa Dental Board (the "Board") took action to expand the definition of "public health settings" to include correctional facilities. Rather than providing notice and an opportunity for public comment as required by the Iowa Administrative Procedures Act (Iowa Code chapter 17A) (the "IAPA"), it is our understanding that the Board simply entertained a motion and a second to include correctional facilities within the scope of public health settings, and then voted to adopt the motion.

In addition to the long-standing concerns of the IDA related to patient safety and the clear risks of expanding public health supervision without a detailed analysis of what level of oversight is necessary, the Board's actions raise serious procedural concerns related to how this motion was adopted. As you know, Iowa Administrative Code rule 650-10.5(1) defines "public health settings" to include a list of specific enumerated categories of locations. The Board's action purports to add an entirely new and unrelated category to this list.

The Board's action appears to constitute the adoption of a new rule in violation of the IAPA. Section 17A.4 of the IAPA sets forth specific procedures every state agency must follow to adopt a rule. For purposes of the IAPA, a "rule" is "each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency." Iowa Code § 17A.2(11). The motion adopted by the Board appears to be a statement of general applicability that implements the Board's enacting statute (specifically, Iowa Code section 153.15), and therefore constitutes a new "rule" within the meaning of that term under the IAPA.

The failure of the Board to comply with the procedural requirements for rulemaking set forth in Iowa Code section 17A.4 makes the resulting rule invalid. Lundy v. Iowa Department of Human Services, 376 N.W.2d 893, 895 (Iowa 1985). The purpose of the rulemaking requirements set forth in section 17A.4 is “to enforce strict compliance with statutory rulemaking procedures, in view of the tendency of some administrators to skirt the requirements. The provision effects the general IAPA purposes of increasing public accountability of agencies, fostering public participation in rulemaking, and assuring agency adherence to a uniform minimum procedure.” Iowa Bankers Ass’n v. Iowa Credit Union Dept., 335 N.W. 2d 439, 447 (Iowa 1983) (internal citations omitted). The Board’s recent actions fly in the face of these clear and important goals for rulemaking specifically and agency action in general.

The Association respectfully requests that the Board rescind its action. If the Board fails to correct its error and proceed pursuant to the IAPA’s rulemaking requirements, the Association will have no choice but to challenge these actions that have been undertaken without regard to the procedural requirements of the IAPA.

Yours truly,

A handwritten signature in black ink, appearing to read "Adam J. Freed", written in a cursive style.

Adam J. Freed

AJF:hs

cc: Sara Scott, Assistant Attorney General, [Sara.Scott@iowa.gov](mailto:Sara.Scott@iowa.gov)

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October 29<sup>th</sup>, 2014 (DRAFT)

**XXXXXXXXX RETIRED VOLUNTEER'S LICENSE -**

(1) Upon application and qualification, the board may issue a retired volunteer's license to a dentist or dental hygienist who has previously held an active dental or dental hygiene license within the past 5 years, and who has retired from the practice of dentistry or dental hygiene, to enable the retired dentist or dental hygienist to provide volunteer dental or dental hygiene services, without remuneration. The Board shall promulgate rules as may be necessary to implement the provisions of this chapter, including, but not limited to, eligibility requirements and services permissible under the license.

~~(2) To be eligible for a retired volunteer's license the applicant must:~~

- ~~a) Be a graduate from a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board; and~~
- ~~b) Has held a full and unrestricted dental or dental hygiene license in good standing for at least 5 years in Iowa or another state, or held privileges to practice dentistry for at least 5 years in the armed forces; and~~
- ~~c) allowed their license with active status to expire and/or lapse with the intention of ceasing to actively practice as a dentist or dental hygienist for remuneration; or~~
- ~~d) converted their license with active status to a license with inactive status with the intention of ceasing to actively practice as a dentist or dental hygienist for remuneration.~~

~~(3) A retired volunteer's license shall be valid for the period specified on the license which shall not exceed one year. A retired volunteer's license may be renewed subject to the same requirements of issuance. The board shall not charge an application or licensing fee for issuing or renewing a retired volunteer's license. A retired volunteer's license cannot be converted to a regular license with active or inactive status, and a retired volunteer's license shall not be considered to be an active dental or dental hygiene license.~~

~~(4) Dentists holding a retired volunteer's license shall not administer general anesthesia, moderate sedation, or minimal sedation to a patient. Dental hygienists holding a retired volunteer's license shall not administer local anesthesia or administer or monitor nitrous oxide.~~

(5) Persons holding a retired volunteer's license shall not charge any fee or receive compensation or remuneration in any form from any person or third party payor including but not limited to, insurance companies, health plans, or state or federal benefit programs.

(6) Persons holding a retired volunteer's license are subject to all rules and regulations governing the practice of dentistry and/or dental hygiene except those requiring the payment of any fees, renewal, and continuing education requirements.

~~(7) Persons holding a retired volunteer's license shall not be required to complete any continuing education requirements and shall not be required to maintain cardio pulmonary resuscitation (CPR) pursuant to board rules.~~

(8) Persons holding a retired volunteer's license shall not practice independent of an Iowa licensed dentist with an active dental license. ~~Persons practicing clinical dentistry or dental hygiene on a volunteer's license shall not exceed a ratio 10 volunteers to every one person holding an active Iowa dental license.~~

(9) An applicant who has surrendered, resigned, converted or allowed a license to lapse or expire as the result of or in lieu of disciplinary action is not eligible for a retired volunteer's license.

(10) The Board may waive the five (5) year requirement upon the condition that the applicant demonstrates that he or she possesses sufficient knowledge and skills to practice safely and competently.

October 20<sup>th</sup>, 2014 (DRAFT)

**XXXXXXXXX RETIRED VOLUNTEER'S LICENSE -**

(1) Upon application and qualification, the board may issue a retired volunteer's license to a dentist or dental hygienist who has previously held an active dental or dental hygiene license within the past 5 years, and who has retired from the practice of dentistry or dental hygiene, to enable the retired dentist or dental hygienist to provide volunteer dental or dental hygiene services, without remuneration, at a specified ~~board-approved location or locations,~~ including but not limited to health fairs, schools, and free clinics. ~~to populations of underserved people who are unable to receive regular dental treatment.~~

(2) To be eligible for a retired volunteer's license the applicant must:

- a) Be a graduate from a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board; and
- b) Has held a full and unrestricted dental or dental hygiene license in good standing for at least 5 years in Iowa or another state, or held privileges to practice dentistry for at least 5 years in the armed forces; and
- c) allowed their license with active status to expire and/or lapse with the intention of ceasing to actively practice as a dentist or dental hygienist for remuneration; or
- d) converted their license with active status to a license with inactive status with the intention of ceasing to actively practice as a dentist or dental hygienist for remuneration.

(3) A retired volunteer's license shall be valid for the period specified on the license which shall not exceed one year. A retired volunteer's license may be renewed subject to the same requirements of issuance. The board shall not charge an application or licensing fee for issuing or renewing a retired volunteer's license. A retired volunteer's license cannot be converted to a regular license with active or inactive status, and a retired volunteer's license shall not be considered to be an active dental or dental hygiene license.

(4) Dentists holding a retired volunteer's license shall not administer general anesthesia, moderate sedation, or minimal sedation to a patient. Dental hygienists holding a retired volunteer's license shall not administer local anesthesia or administer or monitor nitrous oxide.

(5) Persons holding a retired volunteer's license shall not charge any fee or receive compensation or remuneration in any form from any

person or third party payor including but not limited to, insurance companies, health plans, or state or federal benefit programs.

(6) Persons holding a retired volunteer's license are subject to all rules and regulations governing the practice of dentistry and/or dental hygiene except those requiring the payment of any fees, renewal, and continuing education requirements.

(7) Persons holding a retired volunteer's license shall not be required to complete any continuing education requirements and shall not be required to maintain cardio pulmonary resuscitation (CPR) pursuant to board rules.

(8) Persons holding a retired volunteer's license shall not practice **clinically** independent of an Iowa licensed dentist with an active dental license. **The person may do screenings or an educational program without an active licensee present.** Persons practicing clinical dentistry or dental hygiene on a volunteer's license shall not exceed a ratio 10 volunteers to every one person holding an active Iowa dental license.

**(9) An applicant who has surrendered, resigned, converted or allowed a license to lapse or expire as the result of or in lieu of disciplinary action is not eligible for a retired volunteer's license.**

**(10) The Board may waive the five (5) year requirement upon the condition that the applicant demonstrates that he or she possesses sufficient knowledge and skills to practice safely and competently.**