



STATE OF IOWA

IOWA DENTAL BOARD

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

JILL STUECKER
EXECUTIVE DIRECTOR

DENTAL HYGIENE COMMITTEE

OPEN SESSION MINUTES

April 23, 2015
Conference Room
400 S.W. 8th St., Suite D
Des Moines, Iowa

Committee Members	April 23, 2015
Mary C. Kelly, R.D.H.	Present
Nancy A. Slach, R.D.H.	Present
Matthew J. McCullough, D.D.S.	Present

Staff Members

Jill Stuecker, Phil McCollum, Christel Braness, Brian Sedars, Dee Ann Argo, Janet Arjes

Attorney General's Office

Sara Scott, Assistant Attorney General

I. CALL TO ORDER FOR APRIL 23, 2015

Ms. Kelly called the meeting of the Dental Hygiene Committee to order at 10:05 a.m. on Thursday, April 23, 2015. A quorum was established with all members present.

Roll Call:

<u>Member</u>	<u>Kelly</u>	<u>Slach</u>	<u>McCullough</u>
Present	x	x	x
Absent			

II. 1st OPPORTUNITY FOR PUBLIC COMMENT

Ms. Kelly allowed the opportunity for public comment.

Mr. Cope, Iowa Dental Hygienists' Association, was appreciative of the work that board staff and Board has put into the draft Notice of Intended Action for Iowa Administrative Code 650—Chapter 10, specifically as it relates to expanded functions for dental hygienists.

III. APPROVAL OF OPEN SESSION MINUTES

- *January 22, 2015 – Quarterly Meeting Minutes*
- ❖ MOVED by MCCULLOUGH, SECONDED by SLACH, to APPROVE the minutes as submitted. Motion APPROVED unanimously.

IV. LEGAL REPORT

Ms. Scott reported on the decision that came out of the U.S. Supreme Court on the case between the Federal Trade Commission (FTC) and the North Carolina Board of Dental Examiners. The FTC alleged that the North Carolina board was infringing on free trade with the issuance of cease and desist letters to non-licensed dental professionals who were providing teeth whitening services.

Ms. Scott noted that there are some distinct differences between the Iowa Dental Board and the North Carolina Board of Dental Examiners. Their members are elected by the professions, and they retained private counsel. The state practice act was also different from Iowa.

Historically, state agencies were exempt from antitrust laws due to state action immunity. One of the key points of the ruling is that the court stated that a board or agency that is comprised of a controlling number of “market participants” should not have that same immunity. In these cases, the court indicated that these state agencies should be treated differently. Ms. Scott stated that this was a departure from previously-established case law.

The Board will need to demonstrate the reasons for anticompetitive action taken by the Board when those actions occur. Active state supervision is the piece that the Board may need to look at when considering these kinds of actions. When the board members are market participants, an uninterested party may need to review decisions for potential anticompetitive concerns.

Ms. Scott stated that the Board needs to be sure to review the statutes and administrative code to ensure compliance with legal requirements. Ms. Scott stated that nothing needs to change at this point in time; though, it is something to be aware of going forward. The Board needs to be sure to act within the scope of the authority and be cautious of not straying from that. Ultimately, the Board needs to act in the best interest of the public.

There was further discussion about this matter. Ms. Scott also recommended that when interpreting statute, it would be best to do that by the rulemaking process.

V. ADMINISTRATIVE RULES/ADMINISTRATIVE RULE WAIVERS

- *Vote on Notice of Intended Action – Proposed Amendments to Ch. 10, “General Requirements”*

Ms. Kelly reported that the committee had a draft of the Notice of Intended Action for consideration.

Ms. Stuecker reported on some of the history of the rulemaking with respect to expanded functions and dental hygienists. Ms. Stuecker acknowledged that these conversations have been

longstanding and that the Notice of Intended Action being voted on today was the result of compromise.

The committee members and board staff discussed the proposed Notice of Intended Action in detail. While some of the committee members expressed concerns about the limited scope of some of these functions, the committee determined that the rulemaking process should proceed to avoid further delays.

- ❖ MOVED by MCCULLOUGH, SECONDED by SLACH, to recommend adoption of the proposed draft of the Notice of Intended Action. Motion APPROVED unanimously.

Ms. Kelly reported that this would be brought forward to the Board as a recommendation.

VI. OTHER BUSINESS

- *Performing Educational Services Under General Supervision*

Ms. Kelly stated that some questions arose during the discussion related to expanded functions pertaining to the issue of supervision and educational services. Ms. Kelly read the portion of the Iowa Code, which addresses educational services by dental hygienists. Educational services must be supervised by licensed dentists. When working under public health supervision, the services must be documented. There has been some question about how to document this under general supervision.

Ms. Kelly reported that there is a coalition with Delta Dental of Iowa Foundation that will train direct care workers in nursing facilities. It will begin as an initial group of 15 individuals, who will later train others. There are questions about how to document the required level of supervision. Since the statute requires supervision, the Board does not have authority to waive this requirement. The main concern is how to find a way of meeting the requirement without being burdensome.

Mr. McCollum provided some further information. Mr. McCollum stated that Iowa Code Chapter 153 requires supervision by a licensed dentist. However, Iowa Administrative Code 650—Chapter 10 addresses this further: the service must be delegated by a licensed dentist, and supervised by a licensed dentist. This can be done under general supervision.

Ms. Slach asked for a definition of educational services. Mr. McCollum read the portion of Iowa Code, which addressed this in detail.

The committee members, board staff and attendees discussed this in detail. When asked for her opinion, Ms. Scott stated that she was inclined to agree with Mr. McCollum's statements regarding what is required by rule. There may not be anything, which requires correction. There isn't a specific requirement to document compliance with this; however, if someone is concerned about documenting the services and supervision, licensees can certainly document those things as they feel appropriate. Ms. Scott stated that regulating the documentation may raise concerns about over-regulation.

Ms. Kelly asked if it would be sufficient to reflect this in the minutes. Ms. Scott believed that this should be adequate. The committee determined that educational services are allowed under general supervision. Although, there aren't specific requirements to document these services and supervision, licensees may do so if they prefer.

VII. APPLICATIONS FOR LICENSURE & OTHER REQUESTS

- *Request for Clarification on Clinical Examination Requirement for Reinstatement of Dental Hygiene License – Tammy Brousseau, R.D.H.*

Ms. Braness provided an overview of the request. Ms. Brousseau has been inquiring about reinstatement of her Iowa dental hygiene license. Ms. Brousseau has been out of practice for five years. Historically, the Dental Hygiene Committee has required a clinical examination prior to reinstatement in cases where licensees have been out of practice five or more years. This was forwarded for consideration.

The committee members and staff discussed this matter in detail.

- ❖ **MOVED** by KELLY, **SECONDED** by SLACH, to require successful completion of a clinical examination prior to reinstatement. Motion **APPROVED** unanimously.

X. 2nd OPPORTUNITY FOR PUBLIC COMMENT

Ms. Kelly allowed the opportunity for public comment.

No comments were received.

Ms. Kelly asked for input about the new format of the quarterly meetings schedule. Ms. Veenstra stated that it may depend upon how much business is to be conducted. There may be occasions wherein all of the committee and Board business could be completed in one day.

VIII. CLOSED SESSION

- ❖ **MOVED** by MCCULLOUGH, **SECONDED** by SLACH, to go into closed session pursuant to Iowa Code 21.5(1)(a) and (d) to discuss and review complaints and other information required by state law to be kept confidential.

Roll Call:

<u>Member</u>	<u>Kelly</u>	<u>Slach</u>	<u>McCullough</u>
Yes	x	x	x
No			
Absent			

Motion APPROVED by ROLL CALL.

- The Dental Hygiene Committee convened in closed session at 11:06 a.m.

IX. RECONVENE IN OPEN SESSION

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

- The Dental Hygiene Committee reconvened in open session at 11:08 a.m.

X. ACTION ON CLOSED SESSION ITEMS

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

XI. ADJOURN

- ❖ MOVED by SLACH, SECONDED by MCCULLOUGH, to adjourn. Motion APPROVED unanimously.

The meeting of the Dental Hygiene Committee adjourned at approximately 11:09 a.m. on April 23, 2015.

NEXT MEETING OF THE COMMITTEE

The next meeting of the Dental Hygiene Committee is scheduled for July 23, 2015, in Des Moines, Iowa.

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