



E-Forum

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Sedation Rules Review

Two of three scheduled sedation rules review conferences have been held in Greensboro and Asheville. The many excellent suggestions made at the conferences will be considered as the Board begins the pro-

cess of reviewing and modifying current sedation rules. One more conference is scheduled: July 11, 2014 from 8:30 - 10:30 a.m. at the Hilton Inn in Greenville, NC.

Notice of Rulemaking Hearing

A public hearing will be held Thursday, June 12, 2014 at 6:30 pm at the offices of the NC State Board of Dental Examiners to hear comments on proposed changes to the Board's rules. Changes are proposed to Subchapters 16E, 16G, 16H, 16I, 16K and 16N of the Board's rules.

Click [here](#) to read the proposed changes.

The public may attend the meeting and offer comments. Comments may also be submitted via email to [Bobby White](#), the Board's Chief Operations Officer. The comment period extends beyond the date of the public hearing and written comments will be accepted until July 14, 2014.

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Upcoming Board Meetings

Meetings begin at 8:30 am unless otherwise noted.

- June 13-14, 2014 Morrisville
- July 11-12, 2014 Greenville Hilton Inn
- August 15-16, 2014 Morrisville
- September 12-13, 2014 Morrisville

The Board Responds

From time to time licensees submit questions to the Board seeking guidance with specific issues. The answers provided by the Board are based on the specific facts submitted and should be considered as guidance only and not as an enforceable rule.

The Facts: The February minutes of the Board meeting included a response to an oral surgeon who provided custom abutments to restorative dentists. In his inquiry, the oral surgeon stated that he never provided abutments as a means of marketing his practice or paying for a referral. Instead, the abutments were given because, "I simply want the best restorative outcome for the patients..." The Board responded that providing an abutment for this reason was acceptable.

Inquiry #1: If it could be proven that the abutments in the preceding fact pattern were given as payment for referring a patient, would the Board's opinion change?

Absolutely! N.C. Gen. Stat. 90-401 forbids a health care provider from providing financial compensation *in any manner* [emphasis added] to a person, firm, or corporation for recommending or securing the health care provider's employment or as a reward for a recommendation that results in the provider's employment by a patient. It also forbids the referring health care provider from accepting financial or other compensation from the health care provider who provides services when the compensation is given "solely or primarily for the referral." If it can be proven that any manner of compensation

was given for referring a patient, the health care provider involved risks disciplinary action.

It should be noted that this statute creates a "two-way street" since both the referring dentist and the dentist providing the treatment would be in violation if compensation was given or received "solely or primarily for the referral."

N.C. Gen. Stat. 90-402 provides the penalty for breaking this law: "Violation of the provisions of this Article shall be grounds for the offending health care provider's licensing board to suspend or revoke the health care provider's license, to refuse to renew the health care provider's license, or to take any other disciplinary action authorized by law."

Inquiry #2: May a dentist conduct a complete medical history and physical exam for patients undergoing dental surgery in a hospital ambulatory surgery center?

If allowed by the rules of the hospital or ambulatory center and the dentist has the appropriate post-graduate training in conducting physicals and medical histories, he or she may do so only to determine the fitness of her patient for the dental procedure. It would be beyond the scope of dentistry for the dentist to conduct physical examinations or medical histories for the general patient population.

U.S. Supreme Court Agrees to Hear "NC State Board of Dental Examiners v. Federal Trade Commission"

This case started nearly seven years ago when the Federal Trade Commission began its investigation of the North Carolina State Board of Dental Examiners for taking action against unlicensed providers of teeth whitening services. The Board took action based on a clearly articulated North Carolina statute that declared the removal of stains, deposits, and accretions from human teeth to be the practice of dentistry. The FTC claimed that the Board's action came under the jurisdiction of federal antitrust law since it harmed consumers by protecting the tooth whitening market for dentists and thereby increased costs to consumers. The Board

countered that as a state agency it was immune from federal antitrust claims under the "Parker Doctrine" that established that sovereign state regulatory action falls outside the scope of federal antitrust law. After much legal maneuvering and an administrative hearing, the FTC ruled that the dental board was *not* a state agency. Rather the FTC held that, since a majority of the Board members participate in the market they regulate, the Board is a private actor subject to federal antitrust law and the jurisdiction of the FTC.

The case turns on the issue of the nature of the Board. Therefore, the only question before the U.S. Supreme Court is this:

"Whether, for the purposes of the state-action exemption from federal antitrust law, an official state regulatory board created by state law may properly be treated as a "private" actor simply because, pursuant to state law, a majority of the board's members are also market participants who are elected to their official positions by other market participants."

The next term of the Supreme Court begins in October 2014. The date for oral arguments has not yet been set, but will occur sometime after the beginning of the term.

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We're on the web!

ncdentalboard.org

The purpose of the North Carolina State Board of Dental Examiners is to ensure that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry and dental hygiene in the state of North Carolina.

Board Elections

The filing period has ended and ballots have been mailed. Six dentists have filed for the two open dental seats on the Board. Three dental hygienists have filed for the one open dental hygiene seat.

Dental position candidates are:

Stanley L. Allen
Ryan William Leo Burleson
Raymond James Haigney
Andrew W. Kelly
Raleigh T. Wright
Merlin W. Young

Dental Hygiene position candidates are:

Nancy Burkhart
Johnnie Brigman Butterfield
Carla J. Stack

Dentists may vote for **two** candidates.

Hygienists may vote for **one** candidate.

Please read and follow the voting instructions enclosed with your ballot to ensure that your vote counts.

Current Board Members

<u>Current Board Member</u>	<u>Term Expires</u>	<u>Hometown</u>
David A. Howdy, DDS (President)	2016	Washington, NC
Stanley L. Allen, DDS (Sec/Treas.)	2014*	Greensboro, NC
Kenneth M. Sadler, DDS (Past Pres.)	2015	Winston-Salem, NC
Millard W. "Buddy" Wester, DDS	2014	Henderson, NC
Clifford O. Feingold, DDS	2015*	Asheville, NC
William M. Litaker, DDS	2016*	Hickory, NC
Carla J. Stack, RDH	2014*	Charlotte, NC
James B. Hemby, Jr, PhD (Consumer)	2015	Raleigh, NC

**Eligible to run for a second term.*