

South Carolina Board of Dentistry
Special Telephone Conference Call Board Meeting
5:00 p.m., November 22, 2011
Synergy Business Park
Kingstree Building
110 Centerview Drive, Conference Room 108
Columbia, South Carolina

Board Members Present via Telephone:

President:

Thomas M. Dixon, D.M.D.

Board Members:

David W. Jones, D.D.S.

Charles F. Wade, D.M.D.

John M. Whittington, D.M.D.

Douglas J. Alterman, D.M.D.

Eric Schweitzer

Board Member Present in Person:

Dr. Z. Vance Morgan, IV, D.D.S.

Staff Present:

Sheridon H. Spoon, LLR, OGC

Kate K. Cox

Carolyn Coats

Reported by: Robin Spaniel

Thompson Court Reporting, Inc.

3935 Sunset Boulevard, Suite H

West Columbia, SC 29169

- - - - -

DR. DIXON: This is a special call meeting called on November 22, 2011, by the South Carolina State Board of Dentistry. Public notice of this meeting was properly posted at the office of the South Carolina Board of Dentistry, Synergy Business Park, Kingstree Building, 110 Centerview Drive in Columbia, South Carolina and provided to any requesting persons, organizations, or news media in compliance with Section 30-4-80 of the 1976 South Carolina Code, as amended, relating to the Freedom of Information Act. A quorum is noted as present. All votes referenced herein were unanimous unless otherwise indicated. And we need somebody to approve the agenda.

DR. JONES: I make a motion that we approve the agenda as written/stated.

DR. WHITTINGTON: I second.

DR. DIXON: We have a motion and a second. All in favor aye.

BOARD: Aye.

DR. DIXON: Any opposition? None being said then the motion to pass the agenda. Okay. Moving on to new business we're going to be

1 redirecting our attention to the emails that
2 we have been receiving on the Omnibus Cleanup
3 Bill for LLR and the LLR Engine Bill update.
4 First of all, is there any discussion about
5 this? I think we've all had a chance to read
6 over this and it sounds like to me, Kitty, if
7 I take this right, this is kind of just a
8 little bit of cleaning out the attic kind of
9 thing.

10 MS. COX: Yes, sir. And Dr. Dixon, I'd be happy to
11 point out for the record that you're going to
12 be looking in your regulations at 39-5,
13 there's a word used in section D "revoked"
14 we'd like to change that to "inactive" it's
15 clearer and it's what happens.

16 DR. DIXON: Okay.

17 MS. COX: And 39-6 where's it's called the Annual
18 Election of the Board, there were two places
19 that needed cleaning up where they used the
20 word then, t-h-e-n, and it should have been
21 than, t-h-a-n. It makes sense. And then in
22 39-7, you've got something in there that's no
23 longer applicable and they'd like to repeal
24 that in its entirety, the idea of executive
25 director because your statute allows, in 40-

1 15-40 for the agency to help with the person
2 who is going to administer the work of your
3 board. And these are cleanups where you want
4 your statute and your regulation to match your
5 authority.

6 DR. DIXON: That sounds very clear and I think,
7 like I said, this is just some cleanup of the
8 Dental Practice Act and I'm sure this is going
9 on with all agencies just to make sure
10 everybody's on the same page. Is there
11 discussion as far as the Omnibus Cleanup Bill
12 or the LLR Engine Bill?

13 MS. COX: Dr. Dixon, the LLR Engine Bill is a
14 statutory update and I do have your advice
15 attorney here, Sheridan Spoon, if you would
16 like to ask any questions about that. That's
17 a bill that LLR has been using since it's
18 inception and over 20 years it needed to be
19 updated and there were ways that many of the
20 different boards worked that seemed better
21 than some of the things in the engine and
22 they've been incorporated there. You don't
23 have to take a vote on the Engine Bill.
24 You're certainly welcome to ask questions now
25 or later about it. But you would need a

1 motion if you would like to pass the Omnibus
2 Cleanup of the regulations.

3 DR. DIXON: Sheridan, I'd like for you to kind of
4 give us an update on what the Engine Bill
5 update is, basically.

6 MR. SPOON: Okay. And I'll be happy to do that.
7 And I can go section to section if you like.

8 MS. COATS: Dr. Alterman?

9 DR. ALTERMAN: Yeah, I'm here.

10 MS. COATS: Okay.

11 DR. DIXON: Okay. We have Dr. Alterman.

12 MR. SPOON: Just overall, and I think Kitty said it
13 correctly, the Engine Bill was originally
14 written in, I believe I'm correct, in 1993.
15 And I don't really think it's been updated
16 since that time. I think with one exception
17 that had to do with military continuing
18 education that was added to the engine. But
19 other than that all the changes you see here
20 are put in the legislative format so you can
21 see what is a strike through and what is an
22 underline. And so what this is is going to be
23 a statutory change to this engine, Section 41
24 -- or Title 40, Chapter 1. So in looking at
25 what's underlined and crossed out, and I'll

1 really just try to hit the highlights. The
2 first one is in Section 50 and it says
3 something that has pretty much been true all
4 along and I think the copy that you have there
5 makes reference to Section 41, that should be
6 Section 40 in what's underlined and that's
7 already been changed. That addition there to
8 the engine just means that anytime there is a
9 conflict, a direct conflict between your
10 practice act and the engine, the engine would
11 control. And because most of the practice
12 acts, and I think it's true for the Dental
13 Practice Act are more specific than the engine
14 is anyway, that has not really been an issue.
15 There is some language there in that same
16 section where we're proposing to strike the --
17 well, it starts out what's stricken is, When
18 hiring a person charged with evaluating or
19 administering professional qualifications. . .
20 Do you see that? That language is being
21 stricken. And it adds language to give the
22 director authority to hire or determine the
23 necessary compliment and qualifications of
24 employees of the agency. So that was
25 clarified there. It adds some language that I

1 think was existing authority for the
2 department to promulgate regulations related
3 to the engine, which I think really existed
4 all ready. Section 70 adds the delegation
5 power which the boards have traditionally done
6 but it was not something that was spelled out
7 in the engine and it adds the authority or the
8 power and the duty of the board to delegate
9 any duty, right or responsibility of the board
10 to the department. Sections 80 and 85, and I
11 think the rest of these that I'll speak to are
12 really problem solving additions to things
13 that have come up over the years and required
14 a statutory change. For example in Section
15 80, this codifies the ability of a
16 complainant, who makes a complaint with the
17 board, to simultaneously file a motion to have
18 his or her identify withheld and that lies --
19 that determination would lie within the
20 discretion of the board. In Section 85, and I
21 recognize this language from having worked
22 with the Board of Medical Examiners, Section
23 85 is pretty much a new addition to the
24 engine. It is from other acts taken from the
25 Medical Practice Act which the same language

1 was added to their practice act in 2005, I
2 believe, and has worked well. And it, again,
3 clarifies some confusion that has come about
4 in getting request for who is the complainant
5 in my case based on who's asking. If the
6 respondent in the case is asking consistent
7 with the case law in the state that
8 individual, the respondent, is entitled to
9 know the identity of the initial complainant.
10 We would not necessarily disclose that to the
11 general public. But like I said that's what
12 that language is talking about. In Section 85
13 part 3 there, that is from several different
14 practice acts that allows the boards to share
15 information freely in the discretion of the
16 board with other investigating agencies,
17 that's state, federal, other state agencies,
18 other federal agencies relative to the
19 investigation but not, as we have never done,
20 releasing the confidential investigative file
21 to the general public. And that's a lot of
22 what Section 85 is about.

23 DR. DIXON: Sheridan, may I interrupt you for just
24 a second?

25 MR. SPOON: Yes, sir.

1 DR. DIXON: Basically the rule change that I can
2 see from dentistry, we have had in the past
3 where the respondent has asked for the name of
4 the person who made the complaint.

5 MR. SPOON: Yes, sir.

6 DR. DIXON: In the past we've always denied that
7 but in the future with this new engine we will
8 have to provide that with a response if he
9 asks, is that correct?

10 MR. SPOON: That is correct. And I don't know that
11 it was not disclosed during the investigation
12 previously. It would have always been
13 disclosed if there had been a hearing and that
14 person was called to testify. But it is
15 really now -- this addition to the engine is
16 consistent with that Girgis case that actually
17 came out in 1997 or 1998.

18 DR. DIXON: That was a medical case, is that right?

19 MR. SPOON: That was a medical board case. That
20 was back in the days when the medical board
21 cases were tried in circuit court.

22 DR. DIXON: Let me ask you this, can someone make a
23 complaint anonymously at this point?

24 MR. SPOON: They may. The agency itself --

25 DR. DIXON: If the complaint -- if a complaint is

1 made anonymously, how would that -- and the
2 respondent, and the defendant basically wanted
3 to know who that was, if it was made
4 anonymously, how would you respond to that,
5 that it was anonymous or what?

6 MR. SPOON: I have dealt with that. When the
7 person does not wish to reveal their identity
8 but they feel like it's an important enough
9 issue for public safety that they want to make
10 a complaint, the agency and the boards have
11 permitted that and the administrator is the
12 complainant in those instances.

13 DR. DIXON: Okay.

14 MR. SPOON: Because we feel like we do have a duty
15 to investigate all complaints that are
16 received and have not required that the person
17 reveal their identify. We would rather look
18 at the substance of the information itself and
19 see what the allegations are.

20 DR. DIXON: So, Sheridan, that wouldn't change?

21 MR. SPOON: That would not be changing.

22 DR. DIXON: I think the big concern with that
23 overall was that if you had an employee who
24 knew their hygienist or not necessary the
25 hygienist but their doctor was abusing drugs

1 and they didn't want to lose their job they
2 just wanted to get the doctor cleaned up. Or
3 if you had a wife that knew that their husband
4 was abusing drugs and didn't want to end their
5 marriage just wanted to help get their husband
6 back on track that they could make a
7 complaint. So they could still have the
8 avenue to do that, they would just do it
9 anonymously at this point.

10 MR. SPOON: Right. In there in Section 80 it
11 clarifies their ability to make a motion to
12 have their identify withheld. So they could
13 go ahead and tell us who they are if they so
14 choose, as has always been the case, but they
15 can request that their name be withheld.

16 DR. DIXON: Okay. Thank you. Sheridan, is there
17 any others that we need to know about the
18 engine itself?

19 MR. SPOON: Well, there was one thing I thought
20 that any board member would appreciate. We
21 added some language in Section 100 about
22 individual liability. Board member or the
23 director may not be held individual liable for
24 an action taken by the board or its members in
25 their official capacity except for actual

1 malice shown. So that is, again, because of
2 other provisions in state law like the Tort
3 Claims Act I would still say it's true now but
4 this puts it in the engine and I think it does
5 make it stronger for it to be in the engine.

6 DR. DIXON: Makes you sleep better at night because
7 you don't want to be -- you know, we've been
8 threaten to be sued by the Federal Trade
9 Commission before and it's nice to know that
10 you can't -- an individual wouldn't be held
11 for that.

12 MR. SPOON: That's right. Either the FTC or an
13 individual in civil court. To be honest with
14 you Dr. Dixon, I'm not sure how much that
15 provision is actually going to apply to any
16 action the FTC might take to be fair. Because
17 that's a federal action brought by the federal
18 government. But I think it doesn't hurt any
19 time there's a -- but, you know, when you're
20 dealing with the FTC, all bets are off to be
21 candid. But at least it helps from the
22 standpoint of the individual plaintiff. The
23 only other two things that were added dealt
24 with when someone practices with a lapsed
25 license and then want's to have their license

1 reinstated. It gives the board the authority
2 to fine them in the contents of the
3 application hearing. I don't know how much
4 that has come up with the dental board but it
5 has come up with some other boards in the
6 health field and we've had to go back and have
7 an additional hearing on the disciplinary part
8 of it before their license could be
9 reinstated. And so that, I think, is a
10 problem solver there. The other one, don't
11 know how much it applies to the dental board,
12 but it allows the board to promulgate
13 regulations that will allow board to issue
14 administrative citations for violations which
15 the individual can then appeal to the board.

16 DR. DIXON: Okay, Sheridan, thank you for going
17 through that.

18 MR. SPOON: Please look at it and I just wanted
19 y'all to know that while this is being
20 presented for your information rather than for
21 your approval, at the same time, please call
22 me and ask any questions about it and I've
23 been asked to, as you already know, if you
24 have any questions the director's door is open
25 and you can meet with her. A board or two has

1 had a question about the engine and they have
2 met with the director and had those questions
3 -- you know, been able to discuss those and
4 get an answer and find out what the agency's
5 perspective is. I, you know, certainly want
6 to make you aware that you can do that too.

7 DR. DIXON: Thank you, Sheridan. Anyone else have
8 any comments or questions for Sheridan? We're
9 not voting on the engine bill that's basically
10 for our information, is that correct Kitty?

11 MS. COX: That's correct. We would need you to
12 vote on the Omnibus Cleanup Bill for the LLR
13 Regulations for your regs.

14 DR. DIXON: Okay. Do we have a motion on the floor
15 that we have a vote for the Omnibus Cleanup
16 Bill for LLR Dental Board?

17 MR. SCHWEITZER: So moved.

18 DR. ALTERMAN: Second.

19 DR. DIXON: So we have motion by Mr Schweitzer and
20 second by Dr. Alterman. All in favor aye.

21 BOARD: Aye.

22 DR. DIXON: Any opposition? No opposition then
23 that motion carries. Do we have any public
24 comments to be made at this time?

25 MS. COX: No, we don't, Dr. Dixon. No member of

1 the public are present although this meeting
2 has been announced to the public and so
3 there's none there. And the only announcement
4 that I have for you is that your next meeting
5 date is on January 13. Is that correct?

6 DR. DIXON: That's what I remember.

7 MS. COX: Carolyn is nodding yes.

8 DR. DIXON: I think that's the one day meeting that
9 was put back in, is that correct? And then
10 y'all will meet with Dr. Conner in February.
11 Is that correct, Sheridan?

12 MR. SPOON: Yes, that hearing is in February. I
13 think it's February 2nd.

14 MS. COX: Eleventh.

15 MR. SCHWEITZER: Eleven and twelve I think.

16 MS. COX: That's right. We're going to plan for a
17 two day meeting. If it can be handled in one
18 day, that would be fine but we set aside two
19 days.

20 DR. DIXON: Okay. We took care of all our
21 business. Do we have a motion that we
22 adjourn?

23 MR. SCHWEITZER: So moved.

24 DR. MORGAN: Second.

25 DR. DIXON: Thank you Eric. Do we have a second?

1 MS. COX: Dr. Morgan seconded.

2 DR. DIXON: Thank you, Dr. Morgan. All in favor
3 aye.

4 BOARD: Aye.

5 DR. DIXON: Any opposition? Thank you guys and
6 you all have a nice Thanksgiving.

7 MS. COX: Thank you so much for your time we
8 appreciate it.

9 - - - - -

10 (Whereupon, at 5: 31 p.m., the
11 proceedings in the above-entitled matter
12 were concluded.)

13

14

15

16

17

18

19

20

21

22

23

24

25


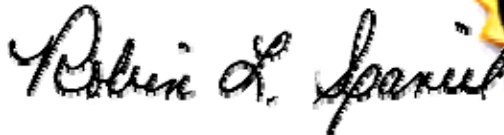
State of South Carolina)
) Certificate
County of Lexington)

Be it known that I took the foregoing
Proceedings;

That I was then and there a Notary Public in
and for the State of South Carolina-at-large;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

Witness my hand and seal December 5, 2011



Robin Spaniel

Notary Public for South Carolina

My commission expires: June 2, 2015

This transcript may contain quoted material. Such
material is reproduced as read or quoted by the
speaker.