

SBOD NEWSLETTER

JUNE 2019

The Probable Cause Screening Committee

By Alice Hart Hughes, Esquire

SBOD Public Member and Chair, Probable Cause Screening Committee

One of the committees of the State Dental Board is the Probable Cause Screening Committee (PCSC). If you are a fan of criminal procedure and investigation programs, you might be familiar with the term *probable cause*, which means whether or not the police (or another investigative body) have a *reasonable belief* to take some action. The classic example is a car stop with police detecting the odor of alcohol or marijuana, giving them *probable cause* to search the car, the trunk, or the passengers' belongings for evidence of illegal activity on which to base criminal charges. This exposure from novels, current events, and television programs can certainly be an entry point to understanding what the Probable Cause Screening Committee of the Dental Board does.

Who is on the Committee?

The PCSC is comprised of three Board members, ideally: one dentist, one public member, and a third Board member. Members of the Dental Board volunteer to serve on the various Board Committees. The Board Chairman then makes appointments, taking into account who has volunteered and what makes for a good working committee. Presently, the Committee is comprised of one public member, one dentist, and the Board representative from the Attorney General's Office.

What does the Committee do?

We review facts patterns in Complaints that require some type of immediate disciplinary or corrective intervention in the practice of dental health professionals licensed in Pennsylvania. Cases that come before the Committee fall into two categories: 1) the **behavior** of a licensee, and 2) the **safe operation** of a dental practice. And while the facts might fall within those two broad categories, for the Committee to take action, our polestar is the task assigned to us by the Pennsylvania Legislature under the Licensing Act – to protect the citizens of the Commonwealth from harm.

Behavior of the licensed dental professional that might jeopardize the welfare of the citizens includes performing procedures beyond the authorized scope of practice, fraudulent prescribing practices, drug and alcohol abuse, and inappropriate sexual or physical contact with patients or employees.

Safe operation concerns include the use of faulty x-ray equipment, defective x-ray protection aprons provided to patients, improper sterilization of instruments, use of unsterilized instruments, or failure of the licensed provider to use gloves and masks.

Always, the ultimate question for the Committee is whether the licensee's behavior or unsafe professional practice is at such a level that it requires immediate action to protect the public - by suspending the license of the provider, or by closing a dental office until corrective action is taken.

How does a complaint come before the Committee?

The Prosecution Division, Department of State Legal Office, presents a complaint to the PCSC when the prosecuting attorney assigned to a case has determined that the situation merits screening for probable cause to intervene in the practice of a licensed dental professional in order to protect the members of the public.

The prosecuting attorney has a number of sources from which a petition for disciplinary action may arise:

- Private complaints – Filed via the SBOD website, can be lodged by dissatisfied patients, unhappy romantic partners, or co-workers who have observed questionable behavior or practices. These complaints are investigated through the Department's Bureau of Enforcement and Investigation (BEI). BEI, in its office visit to investigate a private complaint, may observe additional behavior or practices that may become part of a petition for disciplinary or corrective action.
- Public reports - From law enforcement, other states' licensing boards, the National Practitioners Data Bank, newspapers, and television, which can all land on the prosecutor's desk.

With some follow-up investigation by the Prosecutor's Office and BEI, the prosecutor may file a petition for disciplinary action. Whether it is a matter that requires immediate presentation to the PCSC is at the discretion of the prosecutor, who is guided by the same principle as the Committee – protecting the health and welfare of the citizens of the Commonwealth, which might be jeopardized by the licensee's continued practice.

Only those specific cases come before the Committee.

What can and can't the Committee do?

In a petition for discipline or corrective action that comes before the Committee, the prosecuting attorney is seeking immediate relief. In some instances, the Committee can order a licensee to have a mental and/or physical examination, conducted by an approved physician to determine the nature and extent of an impairment. The Committee can also order the Immediate Temporary Suspension of a license. The orders of the Committee are temporary. Each order grants the licensee time to take

action: to comply with the order, to seek a stay of the order, or to challenge the order. Of course, failure to take action could, by default, result in a permanent decision.

What happens to a licensee after the entry of one of these orders is of no concern to the Committee? Deciding on additional discipline, or the reinstatement of a license, is a function of the Board of Dentistry without the input, assistance, or participation of the members of the Committee. The members of the Committee are considered investigators or preliminary decision-makers, and by nature of the petitions brought before them, hear only one side of the case. There is no opportunity to hear the licensee's story. The Committee does not adjudicate guilt or innocence. We do have strong opinions and maybe long memories. Therefore, we are prohibited from participating in any further action that comes before the Board with regard to a matter where we have issued an order. Members of the Committee cannot participate in ultimate decision making or imposition of discipline when the matter at issue was first heard by them.

A special note about interaction with law enforcement. . .

Law enforcement agencies in the Commonwealth utilize a computer program referred to as the Justice Network, or J-NET. If you are not technologically savvy, here are examples that you may recognize: In divorce and family law, one of the first computerized links for enforcement purposes was developed to identify child support delinquencies. Fail to pay child support, and that information is available to the IRS and your income tax refund can be intercepted. The next logical step, which followed quickly after the IRS intercept, was the development of an additional link with professional licensing agencies, and the ability to suspend a license for violating a court order to pay child support. You might be more familiar with the student loan intercept, which works in the same way, or with the National Practitioners Data Bank, that provides links with disciplinary actions in other states.

Now imagine your driver's license being linked via J-NET to your professional license. When you are pulled over for suspected DUI, a criminal matter, as your driver's license is run through J-NET, and before you've taken the field sobriety test, the prosecutor's office is notified that a licensee has been stopped. Depending on charges filed, this is one of the ways a matter can come before the Probable Cause Steering Committee.

A special note about drug and alcohol matters. . .

All licensees in the medical field, if they are experiencing an issue with drug and/or alcohol dependence are offered admission to the Voluntary Recovery Program (VRP). Some come on their own, and many are referred as a result of a DUI charge. These cases provide the licensee with anonymity and do not come before the Probable Cause Screening Committee. But for those who refuse the offer of VRP, the matter may come before the Committee, and an Immediate Temporary Suspension could be issued,

along with an order for mental and physical evaluation to determine the level of addiction and impairment.

The members of the Probable Cause Screening Committee take seriously our task. We consider and thoughtfully discuss the facts presented. We weigh the welfare of our citizenry against information presented. Are the facts sufficient for us to reasonably believe there is a risk of harm to the public? Some cases are very clear – reuse of disposable instruments. Some cases are harder – the first time someone is stopped for DUI does not necessarily mean s/he has an alcohol addiction. Each case is important to the licensee – and to the public.

BOARD MEMBER UPDATES

Recently two new members have been welcomed to the State Dental Board:

Amber J. Sizemore, Esquire, a member of the SBOD since July 2018, currently serves as Deputy Attorney General in the Health Care Section of the Pennsylvania Office of the Attorney General where her focus is on health care and consumer protection matters.

Ms. Sizemore received her J.D. from the Penn State Dickinson School of Law in 2009. She also holds an M.A. in English from the University of Texas in Irving, TX.

Prior to joining the Attorney General's office, Ms. Sizemore served as Assistant Counsel to the Pennsylvania Department of Labor and Industry, and as University Legal Counsel at the Pennsylvania State System of Higher Education.

Godfrey Joel Funari, DMD, a member of the State Board of Dentistry since October 2018, a native Pennsylvanian, was born and raised in Yardley, PA. After graduating from Pennsbury High School in 1972 he attended Villanova University, earning both a Bachelor's (1976) and a Master's (1979) degree. In 1983, he was awarded his Doctor of Dental Medicine from Temple University Dental School, graduating with honors.

Dr. Funari served in the U.S. Navy for 22 years, rising to the rank of Captain. He last assignment was Associated Director of Specialty Surgery Services, Navy Medical Center, Bethesda, MD, where he was responsible for the oversight of the Departments of Dental/Oral and Maxillofacial Surgery, Dermatology, Ophthalmology, Otolaryngology, and Urology. During his tour at the "President's Hospital", Dr. Funari was the senior Oral and Maxillofacial Surgeon in charge of the care of our nation's political and military leaders, as well as those of our NATO allies. Besides his supervisory and clinical duties, Captain Funari served as a consultant to the Navy Postgraduate Dental School

and served on the staff of the National Capital Consortium Oral and Maxillofacial Surgery Program.

Dr. Funari is currently in private practice in Devon, PA and is a credentialed member of the surgical staffs of the hospitals of Main Line Health.

Dr. Funari is a Diplomate, American Board of Oral and Maxillofacial Surgery; Diplomate, National Dental Board of Anesthesia; Fellow, American College of Dentists; Fellow, Pierre Fauchard Academy; Member, American Dental Association; Member, International Association of Oral and Maxillofacial Surgeons; Member, American College of Oral and Maxillofacial Surgeons; Member, Middle Atlantic Society of Oral and Maxillofacial Surgeons; and Member, Academy of Stomatology of Philadelphia, PA.

In addition to his position as a member of the PA State Board of Dentistry, Dr Funari also serves as an Alternate Delegate to the House, American Association of Oral and Maxillofacial Surgeons; Consultant, American Dental Association Commission on Dental Accreditation; Committee Member, Prescriber Practices of the PA Department of Health; Member-at-Large, PA Society of Oral and Maxillofacial Surgeons; and as a consultant to regional Oral and Maxillofacial Surgery training programs. He has also served in a number of executive positions in local and regional professional organizations.

REMAINING MEETINGS OF THE STATE BOARD OF DENTISTRY - 2019:

July 19

September 13

November 15