

ADA COUNCIL ON ETHICS, BYLAWS, AND JUDICIAL AFFAIRS

Minutes of April 4-5, 2019 Meeting

The regular meeting of the Council on Ethics, Bylaws, and Judicial Affairs (CEBJA or the Council) was called to order at 8:30 a.m. on April 4, 2019. Council chair Dr. James A. Smith presided at the meeting which took place in the Boardroom on the twenty-second floor of the ADA Headquarters Building in Chicago.

Roll call: Council members in attendance for the meeting:

Dr. James A. Smith, chair (11th District, Oregon), Dr. Michael Kurkowski, vice chair (10th District, Minnesota), Dr. Thomas A. Howley (3rd District, Pennsylvania), Dr. Vishruti Patel (8th District, Illinois), Dr. M. Elwood Rice (6th District, Missouri), Dr. Larry F. Browder (5th District, Alabama), Dr. Donald F. Cohen (15th District, Texas), Dr. Seth W. Griffin (9th District, Michigan), Dr. Kristi M. Soileau (12th District, Louisiana), Dr. Jill M. Burns (7th District, Indiana), Dr. Guenter J. Jonke (2nd District, New York), Dr. Onika R. Patel (14th District, Arizona), Dr. Robert J. Wilson (4th District, Maryland), Dr. Meredith A. Bailey (1st District, Massachusetts), Dr. Alma J. Clark (13th District, California), Dr. William D. Cranford (16th District, South Carolina), Dr. Jay A. (Drew) Johnson (17th District, Florida), Dr. Lindsay M. Compton (New Dentist Committee).

Following the calling of the roll, a quorum was announced to be present.

Also present for the entirety of the meeting were: Dr. Paul R. Leary, Board of Trustees liaison and Mr. Ryan Twaddle, American Student Dental Association liaison.

CEBJA staff present for the entirety of the meeting: Thomas Elliott, Jr., Esq., deputy general counsel and council director; Nanette Elster, Esq., manager, Ethics Outreach Programs; and Earl Sewell, council coordinator.

ADA personnel present for all or a portion of the meeting: Dr. Kathleen T. O'Loughlin, executive director; J. Craig Busey, Esq., general counsel; Cathryn E. Albrecht, Esq., senior associate general counsel; Jerome Bowman, chief of governance and strategy management; Gabrielle O'Connor, Division of Legal Affairs coordinator.

Participant Disclosures: The ADA Disclosure Policy was referenced. No disclosures were made.

Adoption of Agenda: By voice vote, the Council adopted the agenda for the meeting.

Resolved, that the printed agenda of the April 4-5, 2019, meeting of the Council on Ethics, Bylaws, and Judicial Affairs be adopted as the official order of business with the stipulation that the chair is authorized to change the order of items for discussion to expedite the business of the Council and to accommodate scheduling issues and special presentations.

Adoption of Consent Calendar: A consent calendar was prepared to expedite the business of the Council. By voice vote, the Council adopted the consent agenda for the meeting:

Resolved, that the items of business marked on the agenda as being on consent for the April 4-5, 2019, meeting of the Council on Ethics, Bylaws, and Judicial Affairs and listed below be approved, the reports thereon filed and any resolutions therein adopted.

Items on Consent:

Item 3.4 Future Meeting Dates

Item 3.5 Report of the Approval of Mail Ballots

Item 5.8 Reports of the ADA Trustee Districts

SPECIAL PRESENTATIONS

Executive Director's Update and Report on the 2020-25 Strategic Plan: The executive director presented an overview of the status of the 2020 strategic plan goals, master brand positioning, and the two new core values. Dr. O'Loughlin also reported on the launch of the ADA Practice Transition Program and Common Ground 2025, the new strategic plan commencing January 2020, following which she responded to questions posed by the Council members.

General Counsel Report: The general counsel updated the Council on legal concerns facing the profession and the inaugural meeting of the National Commission of Specialty Recognition and Certifying Boards, following which he responded to questions posed by the Council members. The members of the Council thanked Mr. Busey for his service to the Association and congratulated him on his retirement.

COUNCIL LEADERSHIP AND STAFF REPORTS

Report of the Chair: Dr. Smith welcomed attendees to the meeting.

Report of the Vice Chair: Dr. Kurkowski welcomed attendees to the meeting.

Report of the Board of Trustees Liaison: Dr. Leary thanked the Council for its work.

Report of the New Dentist Committee Member: Dr. Compton summarized the February meeting of the New Dentist Committee including the presentation of a panel of new dentists practicing with DSOs, the 10 Under 10 awards, and new dentists' interest in the ADA Practice Transition program.

Report of the ASDA Liaison: Mr. Twaddle reported to the Council on the ASDA annual meeting.

Report of the Council Director: The Council director reported on the importance of the work done by the Council and the importance of Council members' engagement with their districts to report on the work of the Council.

Report of Council Manager: The Council manager reported on the status of Ethical Moment articles in JADA and the demand for information about dental and oral health ethics. The Council engaged in discussion with Ms. Elster concerning those topics.

COUNCIL BUSINESS

Administrative and Policy Review Committee Reports:

Annual Policy Review: Dr. Rice, chair of the Administrative and Policy Review Committee, summarized the policies reviewed by the Committee and the Committee's recommendation that the policies reviewed continue without revision. By voice vote, the following resolution was adopted:

Resolved, that the following be included in the Council's next annual report:

In accordance with 170H-2012 (*Trans.*2012:370), the Council reviewed the following Association policies and determined that they should be maintained:

The Dentist's Pledge (*Trans.*1991:598; 2014:479)

Election of Delegates (*Trans.*1979:646)

Patient Rights and Responsibilities (*Trans.*2009:477)

2020 Council Budget: On behalf of the Committee, Dr. Rice provided an informational summary on the status of the CEBJA 2020 budget.

Status of Council's Self-Assessment: Dr. Rice reported that the Committee has reviewed the Council's extensive responses to the self-assessment questionnaire distributed to members. Dr. Rice also reported that a self-assessment report is being developed by staff under the Committee's supervision and that after the report is reviewed by the Committee it will be submitted to the Council for review and approval. The Council discussed the responses to several of the topics that appeared in the questionnaire and Council members spent significant time expressing their views concerning the necessity of face-to-face meetings of the Council.

Bylaws Committee Reports:

Amendment of the Governance Manual Chapter V., Section E.2. – Pilot Programs: Consideration and approval by the Council of the amendment to the Governance Manual: Dr. Kurkowski, as chair of the Bylaws Committee, reported that the Bylaws Committee considered a request by an ADA staff member to amend the *Governance Manual* provisions relating to the annual reporting on pilot programs. That staff member, Mr. Jerry Bowman, appeared before the Council to give background on the request and historical perspective on the original amendment that added pilot program language to the *Bylaws*. The Council engaged in an open discussion on the proposed resolution. The Committee, through Dr. Kurkowski, recommended Council approve the resolution as proposed, but requested that Mr. Bowman edit the background statement accompanying the resolution to ensure that it accurately reflects the rationale for the proposed amendment. Following that review, the report will be resubmitted to the Council so the edited background statement can be reviewed. The chair called for a vote on the resolution as presented. By voice vote, motion to approve the resolution passed.

Resolved, that Chapter V., Section E.2 of the *Governance Manual of the American Dental Association* be amended as indicated (additions underscored, deletions ~~stricken through~~):

CHAPTER V. BOARD OF TRUSTEES

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E. Powers

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2. Consistent with the exercise of its powers to authorize limited scope pilot programs, approve guidelines relating to the conduct of the program when authorizing a pilot program. No pilot program authorized by the Board of Trustees shall exceed a period of three years without approval by the House of Delegates. The Board of Trustees shall annually report to the House of Delegates on any authorized pilot program ~~during the program's duration~~ that is inconsistent with any provision of the Bylaws.

Adopting a Schedule for Periodic Review of ADA Governance Documents: Dr. Kurkowski reported that the Bylaws Committee considered and discussed periodically reviewing ADA governance documents and recommended, based on its discussions, that ADA governance documents be reviewed on a four year

cycle, commencing in 2020. The Council discussed the proposal and proposed review schedule presented by the Committee. Following that discussion, by voice vote, the Committee's recommendation was adopted.

Amendments to ADA Governance Documents Relating to the Appointment of Members to Standing Committees, Special Committees and Subcommittees: Dr. Kurkowski reported that the Bylaws Committee has commenced a review of the governance documents relating to committees, special committees, task forces and workgroups and the selection of and appointment criteria for members thereof. Dr. Kurkowski explained that the review was undertaken with the intent to simplify and clarify the definitions and consistency of usage. The Council engaged in a discussion of this topic during which the Council was informed that the Council director had a telephone conference scheduled with the Speaker of the House of Delegates to discuss this work and plans a further in-person discussion with the Speaker. Dr. Kurkowski suggested that this matter could be advanced by the Bylaws Committee convening a conference call following the further discussions with the Speaker and to thereafter develop a report and recommended resolution for the Council's consideration.

Ethics Committee Reports:

Service Animals vs. Therapy Animals: Dr. Vishruti Patel reported that the Committee will draft an Ethical Moment on the ethical issues implicated by permitting or prohibiting support animals in dental offices, which article could run concurrently with Dr. Wilson's Ethical Moment article on service animals.

Organizational Ethics/ADPAC: Dr. Vishruti Patel reported that the committee discussed the concept of developing a code of organizational ethics. It was reported that the committee suggested that the possible project be raised with directors for other ADA councils so that any development of a code of organizational ethics would be a collaborative effort across the Association. Dr. Patel and the Council's director also reported that the issue was raised with other Council directors and that the proposal received no support. Further, it was reported that during the discussion with the other Council directors, concern was expressed that such a project would not contribute to attaining any of the goals of the ADA strategic plan. Finally, it was reported that the Association does maintain a statement of its core values and precepts, and that the statement addresses many of the same issues that would be addressed by a code of organizational ethics. Based on the foregoing, Dr. Patel reported that the Ethics Committee concluded that there should be no action to be taken at this time to develop a code of organizational ethics.

The Council engaged in a discussion on the ADPAC Philosophy of Giving referred to it by the Board of Trustees. Following that discussion, the Council director was requested to draft a letter to ADPAC concerning the guidelines and calling attention to the Association's statement of core values and precepts. Later in the meeting, the Council reviewed the proposed correspondence and, by voice vote, the proposed correspondence was accepted. The Council chair directed the correspondence to be forwarded to the Board of Trustees.

Amendment to Advisory Opinion 5.F.3. Unearned Non-Health Degrees: It was reported that several complaints have been recently received alleging the misuse of indicia of awards and non-health degrees by members in communications with patients. These complaints have prompted the Ethics Committee to review the relevant provisions of the ADA *Principles of Ethics and Code of Professional Conduct* ("the *Code of Ethics*"), and particularly Advisory Opinion 5.F.3. Dr. Vishruti Patel reported that after its review and discussion, the Ethics Committee recommends revision of the Advisory Opinion by changing the phrase "unearned" in regard to unearned non-health degrees. The Council engaged in a discussion on

the four options presented by the Committee to replace the phrase. The Council voted to change the language to non-accredited or unaccredited. By voice vote, motion unanimously passed.

Continuing Education Committee Report:

Status of Continuing Education Offerings for ADA 2019 and ADA 2020: The Council manager reported that the Council will be offering a one hour CE course on Electronic Media Communication at ADA 2019. The Council manager also reported that two continuing education proposals for presentation at ADA 2020 have been submitted and are under review.

Report of CEBJA/CDEL Workgroup on the Referral of Resolution 21H-2018, Amendment of Policy entitled “Use of the Term Specialty”: Dr. Wilson reported that, in response to a referral by the House of Delegates of Resolution 21H-2018, a workgroup (composed of Dr. Wilson and Dr. Soileau and two members of the Council on Dental Education and Licensure (CDEL)) crafted an amendment to current policy to reflect the recent changes in the processes by which dental specialties and certifying boards are recognized. On behalf of the Workgroup, the following resolution was moved:

Resolved, that the ADA policy entitled “Use of the Term ‘Specialty’” (*Trans.*1957:360) be amended as follows (additions underscored, deletions ~~stricken through~~):

Resolved, that the use of the term “specialty” be reserved for those ~~by any groups which that do not represent a dental specialties specialty-formally recognized by the American Dental Association National Commission on Recognition of Dental Specialties and Certifying Boards and/or are accepted as specialties in the jurisdictions in which they practice~~ ~~be disapproved~~.

The Council, by voice vote, approved the resolution. The resolution will be forwarded to CDEL for its consideration during its June 2019 meeting.

Status of the Student Ethics Video Contest: The Council coordinator reported on the growth and increased visibility of the student ethics video contest and the 2019 timeline for students’ submissions.

Election of the 2019-2020 Chair: By voice vote, Dr. Kurkowski was officially selected as the 2019-2020 chair of CEBJA:

Resolved, that the Council selects Dr. Michael Kurkowski as chair of the Council on Ethics, Bylaws and Judicial Affairs for the 2019-2020 term, and it is further

Resolved, that staff is directed to notify the Board of Trustees of the chair selection.

Dr. Kurkowski’s selection will be communicated to the Board of Trustees and reported in the Council’s annual report.

Election of Vice Chair: By ballot vote, Dr. Wilson was elected Council vice chair. Dr. Wilson’s election will be communicated to the Board of Trustees and reported in the Council’s annual report.

Standing Committee on Constitution and Bylaws: The chair requested Council members attending the ADA 2019 meeting to volunteer for the Standing Committee. Dr. Clark, Dr. Burns, Dr. Wilson, Dr. Rice, Dr. Smith, Dr. Kurkowski, Dr. Onika Patel, Dr. Bailey and Dr. Cohen volunteered.

Presentation of Council Plaques: Outgoing members of the Council, Dr. Smith, Dr. Howley, Dr. Patel, Dr. Rice and Dr. Compton, were presented with plaques commemorating their service to the Council, the

ADA and the profession of dentistry. Members and staff of the Council thanked the outgoing members for their service.

NEW BUSINESS

Vaccinations: The Ethics Committee recommended the Council develop a white paper to address ethical issues relating to vaccinations. The Council engaged in a discussion on the recommendation, following which a motion was brought to the floor to produce a white paper to address the topic. The motion was duly seconded following which the motion passed by voice vote. The development of the white paper was referred to the Ethics Committee by the chair.

Council on Dental Practice Request to Review and Comment on Amendment to Policy Entitled “ADA Employment of a Dentist”: The chair reported on the receipt of an email request from the chair of the Council on Dental Practice (CDP) requesting that the Council review and comment on proposed amendments to the mentioned policy. The Council engaged in discussion on the proposed amendments and recommended proposing additional revisions that use the language of Section 4.A. of the *Code of Ethics* for consistency. The chair and the Council director will develop correspondence to the CDP chair that communicates the Council’s additional suggested revisions.

Proposal on President-elect Election Process: At the request of Dr. Bailey, the Council discussed the proposed amendments to the *ADA Constitution and Bylaws* that proposes that the President-elect be elected by the Board of Trustees instead of the House of Delegates. During the discussion, the Council was reminded that the resolution proposing the amendments was introduced at the 2018 House of Delegates and, therefore, cannot be amended except by House action

Ethics Education Modules: The Council manager presented on the Ethics Committee’s discussion on the creation of ethics education modules to provide a means for continuing ethics education for dentists. The Council engaged in a discussion of the matter and requested that the topic be added to the agenda for the March 2020 meeting.

FOR THE GOOD OF THE COUNCIL

The members of the Council, Dr. Leary, Dr. Compton, Mr. Twaddle, and the Council staff participated in the traditional For the Good of the Council closing of the meeting.

ADJOURNMENT

On motion duly seconded, there being no remaining business on the Council’s meeting agenda, the chair declared the meeting adjourned at approximately 12:15 p.m. on April 5, 2019.