

ADA COUNCIL ON ETHICS, BYLAWS, AND JUDICIAL AFFAIRS Minutes of March 26-27, 2020 Meeting

The regular meeting of the Council on Ethics, Bylaws, and Judicial Affairs (CEBJA or the Council) was called to order at 9:00 a.m. on Thursday, March 26, 2020. Council chair Dr. Michael A. Kurkowski presided at the meeting which took place via the Zoom videoconference platform.

Roll call: Council members in attendance for the meeting: Dr. Michael A. Kurkowski, Dr. Larry F. Browder, Dr. Donald F. Cohen, Dr. Seth W. Griffin, Dr. Kristi M. Soileau, Dr. Jill M. Burns, Dr. Guenter J. Jonke, Dr. Onika R. Patel, Dr. Robert J. Wilson, Jr., Dr. Meredith A. Bailey, Dr. Alma J. Clark, Dr. William D. Cranford, Dr. Jay A. Johnson, Dr. Bruce A. Burton, Dr. Gary S. Davis, Dr. Ansley H. Depp, Dr. Renee P. Pappas and Dr. Daniel W. Hall (New Dentist Committee)

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

Also present for the entirety of the meeting were: Dr. Linda K. Himmelberger, Board of Trustees liaison, and Ms. Anisha Pandya, American Student Dental Association liaison.

CEBJA staff present for all or a portion of the meeting: Thomas C. Elliott, Jr. Esq., deputy general counsel and director of the Council on Ethics, Bylaws and Judicial Affairs; Nanette Elster, Esq., manager, Ethics Outreach Programs; and Mr. Earl Sewell, council coordinator.

ADA personnel present for all or a portion of the meeting: Dr. Kathleen T. O'Loughlin, executive director; Cathryn E. Albrecht, Esq., senior associate general counsel; Ms. Gabrielle O'Connor, Legal Affairs Division coordinator; and Mr. Quincey Haygood, Technology, Technical Support Specialist.

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

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

Resolved, that the printed agenda of the March 26-27, 2020, meeting of the Council of 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 Agenda: A consent agenda 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 March 26-27, 2020 meeting of the Council on Ethics, Bylaws and Judicial Affairs and listed below be approved, the reports thereon filed and resolutions therein adopted

Items on Consent:

Item 3.4 Future Meeting Dates

Item 3.5 Approval of the Minutes of the April 4-5, 2019 CEBJA Meeting

Item 5.1 Reports of the ADA Trustee Districts

SPECIAL PRESENTATIONS

Executive Director's Presentation: Dr. O'Loughlin reported on ADA response to COVID-19 and the Common Ground 2025 strategic plan. Following her presentation, Dr. O'Loughlin answered questions from Council members.

COUNCIL LEADERSHIP AND STAFF REPORTS

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

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

Report of the Board of Trustees Liaison: Dr. Himmelberger thanked the Council for their work.

District Report Updates: Members reported on coronavirus issues from their districts.

Report of the New Dentist Committee Member: Dr. Hall reported on the new dentist perspective on the COVID-19 pandemic as it relates to financial security.

Report of the ASDA Liaison: Ms. Pandya reported on graduation postponement for dental students.

Report of the Council Director: Council Director submitted a written report reflecting the duties of Council and thanked the Council for their work.

Report of the Council Manager: Council Manager reported on the work of the Ethics subcommittee, the progress of the Ethical Moments in JADA, and proposals for CE at the 2021 Annual Meeting.

COUNCIL BUSINESS

Administrative and Policy Review Subcommittee: Dr. Seth Griffin, subcommittee chair, presented the following reports from the Administrative and Policy Review Subcommittee:

Periodic Review of Association Policies: Dr. Griffin summarized the policy reviewed by the Committee and recommended that the policy continue without revision. On behalf of the subcommittee, Dr. Griffin moved the following resolution which by voice vote was adopted:

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

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

Criteria for Restructure of Trustee Districts (*Trans.* 1986:498)

Review of Council Statements: Dr. Griffin summarized the subcommittee's review of each of the statements listed below previously adopted by the Council, the subcommittee's findings of relevance and its recommendations on continuing the availability of the statements. Following discussion, the Council took the action indicated:

Statement of Dental Tourism – Ethical Obligations of Dentists: On behalf of the subcommittee, Dr. Griffin moved the following resolution which by voice vote was adopted:

Resolved, that the statement from the Council on Ethics, Bylaws and Judicial Affairs entitled “Statement on Dental Tourism – Ethical Obligations of Dentists” continues to be relevant and is current and, therefore, should be retained and continue to be available to members via ADA.org.

Ethical Aspects of Dental Practice Arrangements: On behalf of the subcommittee, Dr. Griffin moved the following resolution which by voice vote was adopted:

Resolved, that the statement from the Council on Ethics, Bylaws and Judicial Affairs entitled “Ethical Aspects of Dental Practice Arrangements” continues to be highly relevant and is current and, therefore, should be retained and continue to be available to members via ADA.org; and be it further

Resolved, that the Council engage in discussion concerning methods of bringing the statement to the attention of members of the Association, so that members can be reminded of the ethical tenets that support the views expressed in the statement.

Ethical Considerations When Using Patients in the Examination Process: On behalf of the subcommittee, Dr. Griffin moved the following resolution which by voice vote was adopted:

Resolved, that the Council postpone further consideration of the Council's statement entitled “Ethical Considerations When Using Patients in the Examination Process” until the Council's July 24-25, 2020 meeting.

Gift Giving to Dentists from Patients, Colleagues and Industry: Is it a Problem in Dentistry Today?: On behalf of the subcommittee, Dr. Griffin moved the following resolution which by voice vote was adopted:

Resolved, that the Council's statement entitled “Gift Giving to Dentists from Patients, Colleagues and Industry: Is it a Problem in Dentistry Today?” continues

to be relevant and should be retained as modified (additions underscored) as shown in Appendix 5.

The Ethics of Temporary Charitable Events: On behalf of the subcommittee, Dr. Griffin moved the following resolution which by voice vote was adopted:

Resolved, that the Council's statement entitled "The Ethics of Temporary Charitable Events" continues to be relevant and is current and, therefore, should be retained and continue to be available to members via ADA.org; and be it further

Resolved, that the Council engage in discussion concerning methods of bringing the statement to the attention of organizations and agencies that sponsor events that provide charitable dental care, and explore whether a mechanism exists for the statement to be systematically redistributed periodically to such sponsors.

Secondary Review of Association Policies Requested by Other Agencies: Dr. Griffin summarized inter-counsel collaboration and the requests from the Council on Dental Education and Licensure (CDEL) and the Council on Dental Practice ("CDP") for review of revisions for ADA policies on Dentistry and Dentistry as an Independent Profession (CDEL) and teledentistry (CDP).

Bylaws Subcommittee: Dr. Robert J. Wilson, Jr., subcommittee chair, presented the following reports from the Administrative and Policy Review Subcommittee:

Periodic Editorial Review of the *Bylaws and Governance Manual*: Dr. Wilson summarized the editorial review of Chapters I, II, III, IV and XII undertaken by the subcommittee. After reminding the Council that the Council has the power to editorially revise the governance documents of the Association by virtue of Chapter VIII., Section K.6.b.ii. of the *Governance Manual of the American Dental Association* ("*Governance Manual*"), Dr. Wilson moved each of the following subcommittee resolutions to editorially revise the noted portions of the ADA *Bylaws* and *Governance Manual*:

Revision to the *Governance Manual* Chapter I., Section A.2.e. (line 42): Following discussion by the Council, by unanimous voice vote, the following resolution was adopted:

Resolved, that the Chapter 1., Section A.2.e. of *Governance Manual of the American Dental Association* be amended by replacing the word "Active" with "Retired" as shown (additions underscored, deletions ~~stricken through~~):

- e. Active-Retired members in good standing are eligible for election as a delegate or alternate delegate to the ADA House of Delegates and, subject to any limitation adopted by the House of Delegates in the Election Commission and Campaign Rules, are also eligible for election or appointment to any office or agency of the ADA, except as may be otherwise provided in the ADA Bylaws or this Governance Manual.

Revision to the *Governance Manual* Chapter I., Section B.1.g. (line 150): Following discussion by the Council, by unanimous voice vote, the following resolution was adopted:

Resolved, that the Chapter I., Section B.1.g. of *Governance Manual of the American Dental Association* be amended by deleting the phrase “from time to time” as shown (deletions ~~stricken through~~):

- g. International Members: The amount as set ~~from time to time~~ by the Board of Trustees. The Board of Trustees can, however, deviate from the established dues rate for international members in order to:
 - i. promote international membership in the ADA a selected jurisdiction; and
 - ii. recognize economic circumstances in those least developed countries eligible for special fee criteria as established by the FDI World Dental Federation.

Revision to the *Governance Manual* Chapter I., Section B.3. second (unnumbered) paragraph (line 195): Following discussion by the Council, by unanimous voice vote, the following resolution was adopted:

Resolved, that the Chapter I., Section B.3 of *Governance Manual of the American Dental Association* be amended by deleting the word “upon” as shown (deletion ~~stricken through~~):

3. Acceptance of Back Dues and Special Assessments. For purposes of establishing continuity of active membership to qualify for life membership, back dues and any special assessment, except as otherwise provided in the *Bylaws*, shall be accepted for not more than the three (3) years of delinquency prior to the date of application for such payment. The rate of such dues and/or any special assessment, except as otherwise provided in the *Bylaws*, shall be in accordance with Chapter I., Section 40. of the *Bylaws*.

For the purpose of establishing continuity of active membership in order to qualify for life membership, an active member, who had been such when entering ~~upon~~ active duty in one of the federal dental services but who, during such federal dental service, interrupted the continuity of active membership because of failure to pay dues and/or any special assessment and who, within one year after separation from such military or equivalent duty, resumed active membership, may pay back dues and any special assessment for any missing period of active membership at the rate of dues and/or any special assessment current during the missing years of membership.

Revision to the Governance Manual Chapter III., Section A.3. (lines 400, 402, and 405): Following discussion by the Council, by unanimous voice vote, the following resolution was adopted:

Resolved, that the Chapter III., Section A.3. of *Governance Manual of the American Dental Association* be amended by replacing the words “Executive Director” with “Secretary of the House of Delegates” in three (3) places as shown (additions underscored, deletions ~~stricken through~~):

3. Official Call of Sessions of the House of Delegates.

- a. Annual Session. The ~~Executive Director~~ Secretary of the House of Delegates of the Association shall direct that an official notice of the time and place of each annual session be published in the Journal of the American Dental Association. The ~~Executive Director~~ Secretary of the House of Delegates of the Association shall also send an official notice of the time and place of the annual session to each member of the House of Delegates at least thirty (30) days before the opening of such annual session.
- b. Special Session. The ~~Executive Director~~ Secretary of the House of Delegates of the Association shall send an official notice of the time and place of each special session and a statement of the business to be considered to every officially certified delegate and alternate delegate of the last House, not less than fifteen (15) days before the opening of such special session.

Revision to the Bylaws, Chapter XII., Section 60.A. (line 826-827): Following discussion by the Council, by unanimous voice vote, the following resolution was adopted:

Resolved, that Section 60.A. of Chapter XII. Of the *Bylaws* be amended by addition as follows (additions underscored):

Section 60. SPECIAL ASSESSMENTS:

- A. LEVYING: Special assessments may be levied by the House of Delegates upon active, life and retired members of this Association as provided in these Bylaws for the purpose of funding a specific project of limited duration. Such an assessment may be levied at any annual or special session of the House of Delegates by a two-thirds (2/3) affirmative vote of the delegates present and voting provided that the notice requirements contained in the Governance Manual have been fulfilled. Any resolution to levy a special assessment that does not meet the notice requirements set forth in the Governance Manual may be adopted by a unanimous vote of the House of Delegates provided the resolution has been presented in writing at a previous meeting of the same session. Debate on a resolution to levy a special assessment shall proceed in accordance with the procedures found in

the Chapter XII., Section C.2. of the Governance Manual. The House of Delegates may amend the main motion to levy a special assessment only if the amendment is germane and adopted by a twothirds (2/3) affirmative vote of the delegates present and voting.

- B. ACCOUNTING OF FUNDS: Revenue from a special assessment and any earnings thereon shall be deposited in a separate fund as provided in this Chapter.

Request for Advice Directed to Council on Membership: On behalf of the subcommittee, Dr. Wilson summarized the review of Chapter XII., Section A. of the *Governance Manual* and indicated that, in light of the dues simplification initiative that was adopted by the 2019 House of Delegates to take effect with the 2021 dues, the subcommittee questioned whether the ability to remit dues via installments should be extended to membership categories in addition to the active, life and provisional members currently set forth in the Association's governance documents. Following discussion, the Council, by voice vote, adopted the following resolution:

Resolved, that staff to the Council prepare correspondence from the Council chair to the chair on the Council on Membership requesting that the Council on Membership consider and advise whether installment payments for dues and special assessments should be made available to membership classifications in addition to active, life and provisional members as currently specified in the *Governance Manual of the American Dental Association*, Chapter XII, Section A.:

- A. Installment Payments of Dues and Special Assessments. Any constituent or component may establish a plan for the installment payment of dues and special assessments for active, life and provisional members. This Association may establish a plan for the installment payment of dues and special assessments for active and life members who are direct members of the Association. Any such installment plan shall require:
 1. Monthly installment payments that conclude with the current dues and any special assessment amount being paid by December 15.
 2. The expeditious transfer of installments of member dues and any special assessments collected to the Association and any applicable constituent or component.
 3. Any installment plan adopted under this provision of the *Governance Manual* may impose a reasonable transaction fee upon the member. Transaction fees collected shall be prorated between this Association and the constituent and component, if any, based on the amount of dues and special assessment collected on each organization's behalf.

Request for Advice Directed to the Diversity and Inclusion Committee of the Board of Trustees: On behalf of the subcommittee, Dr. Wilson reported on a discussion held by the subcommittee regarding the propriety of the use of the term "classes" in referring to membership categories as is presently done in the Association's Articles of Incorporation. Dr. Wilson stated that the

subcommittee believes that some might find the use of the term objectionable or even offensive. Following discussion, the Council, by voice vote, adopted the following resolution:

Resolved, that staff to the Council prepare correspondence from the Council chair to the chair of the Diversity and Inclusion Committee of the Board of Trustees requesting that the Committee on Diversity and Inclusion review Article 6 of the Articles of Incorporation and advise whether the Committee believes that the use of the phrase “classes of membership” in Article 6 has negative connotations sufficient to justify the amendment of the Articles of Incorporation.

Amendment to *Bylaws* Chapter I., Section 20.B.D.: Dr. Wilson presented the subcommittee’s proposal substantive amendment to the noted portion of the ADA *Bylaws* that will be presented to the Council in a forthcoming report in advance of the July Council meeting.

Amendment to *Bylaws* Chapter III., Section 120 (second paragraph): Dr. Wilson reported on the subcommittee’s potential substantive amendments to the noted provision of the ADA *Bylaws* which will be presented to the Council for consideration at the July Council meeting.

Amendment to *Governance Manual* Chapter III., Section A.1.: Dr. Wilson reported on the subcommittee’s potential substantive amendments to the noted provision of the ADA *Bylaws* that will be presented to the Council for consideration at the July Council Meeting.

Ethics Subcommittee

Discussion Concerning the Ethical Implications of Dating Staff: Dr. Griffin presented on a concern about professional conduct in the workplace with regard to personal relationships. Council engaged in an open discussion on the subject without taking any action.

Requests for Donations of Personal Protective Equipment by Governmental Agencies: Dr. Depp raised the issue of the need for dentists to protect themselves and their staff while at the same time honoring government requests to turn over PPE. It was reported that the Council is participating in task forces that are generating information and developing guidelines for the dental profession on various issues that have arisen in light of the Coronavirus pandemic. The concerns over PPE will be addressed in a statement by the appropriate task force that grounded in ethics on how to maintain enough PPE to address emergencies while fulfilling requests for PPE.

Report of the Ethics Subcommittee on Ongoing Activities: Council Manager summarized the activities of the subcommittee including the review of the ethical issues raised by unvaccinated patients, substance use and abuse with providers and staff, and the subcommittee’s review of statements generated when advisory opinions found in the ADA Principles of Ethics and Code of Professional Conduct were adopted by the Council.

Continuing Education Subcommittee

Report of Continuing Education Subcommittee on Ongoing Activities: Dr. Soileau presented on the continuing education courses available about ethical issues regarding COVID-19.

OTHER COUNCIL BUSINESS

Ethical Implications of the Coronavirus Pandemic on the Practice of Dentistry: Council engaged in a lengthy and detailed discussion about the ethical dilemmas posed to the profession by pandemic and developed a list of suggested pandemic-related issues for which ethical guidance might be provided. The consensus of the Council was that staff and individual Council members, as appropriate, should work to develop ethical guidance on the issues to assist clinical practitioners through the ADA's coronavirus task forces.

Discussion of development of COVID-19 related ethics FAQs: As a part of the Council's discussion of the ethical issues arising from the coronavirus pandemic, it directed staff to continue working with the Council leadership and members to develop easily accessible ethicsbased FAQs to be disseminated to dental professionals.

PA order on emergency dental treatment in negative pressure operatory: Dr. Davis reported on the mandate issued by the Pennsylvania Department of Health that dental offices were to stop performing clinical dentistry unless clinicians and staff had fitted N95 masks and the procedures were performed in negative pressure operatories. The Council engaged in discussion on the ethical dilemmas posed by the Pennsylvania. Later in the meeting, Dr. Himmelberger reported that following intervention by the Pennsylvania Dental Association, the emergency mandate issued by the Pennsylvania Department of Health was modified so that negative pressure operatories for performing emergency dental care were no longer required.

Selection of Council Chair and Election of Vice Chair: The chair summarized the Council's process for selecting leadership for the ensuing year and reminded the Council that the election of the vice chair and selection of the chair will take place at the July 2020 meeting.

Discussion on the Need for Council Consultants in 2020-2021: The Council director reported on Council's opportunity to appoint consultants to provide expertise or support that cannot be met by the Council itself. The Council director and Council manager will make suggestions to be discussed at July 2020 meeting.

Report of the CEBJA Representative to the CDEL CE Oversight Committee: Dr. Clark summarized the December 4 CDEL meeting of the CDEL CE Oversight Committee on which she sits as the CEFBJA representative.

Review of Council Programs and Activities to Identify Non-Essential Tasks: The chair reminded the Council of Dr. Gehani's request that all Councils to review programs and projects in which they are involved. The purpose of the review is to identify programs and projects that can be curtailed as not supporting the Association's strategic plan, thereby resulting in cost savings. Council engaged in open discussion, and requested that the Council chair and director collaborate to put together a report on Council activities, the impact on the current strategic plan and the cost of each activity. The Council will review the report at the July 2020 meeting and take such action as deemed appropriate thereafter.

Review and Amendment of Section 3.A. of the Code of Ethics: Dr. Wilson raised a possible amendment to Section 3.A. of the *Code of Ethics*. Community Service, as follows (deletion stricken through):

Since dentists have an obligation to use their skills knowledge and experience for the improvement of the ~~dental~~ health of the public...

Dr. Wilson suggested a possibility for the background statement would include aligning the Code of Ethics with the ADA Constitution, and the increased awareness of ADA members and stakeholders in the community in which the profession practices dentistry as the *Principles of Ethics* are applied.

Following the discussion of Dr. Wilson's proposal, the Council by consensus referred the suggestion to the Ethics subcommittee for further study and a report back to the Council at its July 2020 meeting with the subcommittee's recommendation.

NEW BUSINESS

No new business was identified.

FOR THE GOOD OF THE COUNCIL

The members of the Council, Dr. Hall, Ms. Pandya, 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 11:18 A.M. on Friday, March 27, 2020.