

**Maine Board of Dental Practice  
Board Meeting Minutes**

**August 11, 2017**

The meeting convened at 8:43 a.m.

**Members Present:** Stephen Morse, DMD; Nancy Foster, RDH, EFDA; Rowan Morse, Public Member; Kathryn Young, LD; Glen Davis, DMD; Catherine Kasprak, RDH; Paul Dunbar, DDS; and Lisa Howard, DDS

**Also Present:** Lorraine Klug, RDH, Maine Dental Hygiene Association; Tricia Spearin, RDH, EFDA; Bonnie Vaughan, RDH, Maine Dental Hygiene Association; Steve Collins; Mark Terison, Esq.; Deborah Bruns, Court Reporter, Alley & Morrisette; Court Reporter on behalf of James Belleau, Esq.; Adam Lee, Esq.; James Belleau, Esq.; Susanne Kuehl, RDH; Angela Westhoff, Maine Dental Association; Kent Murdick, Esq.; Kate Carnes; Jonathan Bolton, AAG; James Bowie, AAG; Carol Eisenberg, Esq.; David Wicks, DDS; Ann Marie Grenier, RDH; Mark Franco, Esq.; Lauren LaRochelle, Assistant Attorney General; Teneale Johnson, Executive Secretary; and Penny Vaillancourt, Executive Director

**Procedural Order on Alleged Bias (Complaint Nos. 16-5, 16-6, 16-19 through 16-22, 16-37 through 16-40, 16-42, 16-43, 16-45, 16-47, 16-69, 16-71, and 16-103) Issued by F. Mark Terison, Hearing Officer:** Hearing Officer F. Mark Terison, Esq. requested a meeting with the members of the Board for purposes of conducting an inquiry and affording Board members individually, the opportunity to determine the matter of bias on the record as provided under 5 M.R.S. § 9063, and addressing possible dates for hearing on the above complaint cases. Ms. Young made a motion to enter into executive session to receive legal advice pursuant to 1 M.R.S. § 405 (6) (E). The motion was seconded and it passed with Ms. Foster recused. Dr. Morse made a motion to come out of executive session, which was seconded and passed with Ms. Foster recused. The Board members then responded to Hearing Officer Terison's questions of bias.

**Subcommittee on Dental Hygienists Report:** Ms. Grenier provided the following report to the Board:

- The Subcommittee members approved their June 9<sup>th</sup> and July 14<sup>th</sup> meeting minutes;
- The members also reviewed the list of approved continuing education courses and the preliminary agenda for upcoming meetings;

**Subcommittee on Dental Hygienists Report (Cont'd):**

- The Subcommittee members reviewed a draft consent agreement to resolve complaint 16-57. This was a board initiated complaint based on a failed continuing education audit from 2013-2014. The original consent agreement offered to the licensee was for her to accept a warning, and to complete additional continuing education. Since the offer was made, the licensee has allowed her license to lapse and indicated to Board Counsel that she no longer wishes to practice dental hygiene. AAG LaRochelle presented a draft agreement to the Subcommittee members whereby the individual would agree to accept a warning for failure to meet the continuing education requirements for license renewal and agrees to never apply for dental hygiene licensure in the future. The Subcommittee members voted to recommend that the board accept the draft consent agreement and send it to the individual, and if she chooses not to sign the agreement within thirty days, the matter will be set for an adjudicatory hearing. Ms. Young made a motion to accept the Subcommittee recommendation. Dr. Dunbar seconded the motion and it passed unanimously.

**Complaint 17-35 – Consideration of Request for Dismissal of Complaint without Prejudice:** The Licensee’s attorney filed a request with the Board that they dismiss the complaint without prejudice, based on extenuating circumstances that his client is facing. AAG LaRochelle indicated that this action would be unprecedented. Dr. Dunbar made a motion to continue with the complaint investigation. Dr. Davis seconded the motion. Dr. Dunbar then asked whether the Board could send a letter to immigration informing them of the pending investigation. AAG LaRochelle explained that pending complaints are confidential and the Board cannot have communications with outside parties, but the Board could consider sending a letter to the licensee. Dr. Dunbar withdrew his previous motion and Dr. Davis withdrew his second to that motion.

Dr. Davis made a motion to continue the investigation into the complaint, and to deny the Attorney’s request to dismiss the case without prejudice. Ms. Foster seconded the motion and it passed with Dr. Morse recused as the Complaint Officer.

**Board Vice Chair Report:**

- Board Officer Nomination: Dr. Dunbar made a motion to nominate Dr. Howard as Board Chair for the remainder of 2017. The motion was seconded and it passed with Dr. Howard recused. Ms. Morse made a motion to nominate Dr. Morse as Vice Chair for the remainder of 2017. Dr. Davis seconded the motion and it passed with Dr. Morse recused.

**Application for Expanded Function Dental Assistant Licensure – Danica J. Meunier:** Following review of the application for licensure, Ms. Kasprak made a motion to grant and EFDA license to Ms. Meunier. Dr. Dunbar seconded the motion and it passed unanimously.

**Application for Expanded Function Dental Assistant Licensure – Lucinda T. Burns:** Following their review of the application and accompanying documents, Dr. Davis made a motion to grant and EFDA license to Ms. Burns, and to remind her of the reporting requirements outlined in Board statute 32 M.R.S. §18352. Ms. Kasprak seconded the motion and it passed unanimously.

**Complaint 15-18:** This complaint was previously reviewed and tabled by the Board in order to request medical information concerning the licensee's diagnosis and/or treatment regarding tremors and gag reflex. The information has not been received, but the licensee, through his attorney, requested the Board's consideration of dismissing the complaint and to allow the licensee to voluntarily surrender his Maine dental license.

**Complaint 17-45:** This complaint was previously reviewed by the Board with a vote to offer the licensee an interim consent agreement that would prevent the licensee from practicing dentistry until such time as he has had an evaluation. The Board also voted at that time, that if the licensee refused to sign the interim agreement, the Board would order the evaluation. The licensee has signed the interim consent agreement. The licensee, through his legal counsel is requesting that the Board consider dismissing the complaint against his license, and allow him to voluntarily surrender his license. The licensee states that he intends to retire and close his practice.

Ms. Foster made a motion to approve the interim consent agreement as amended which removed the provision that he undergo an evaluation which is based on his retirement from practice, and his request that the Board allow him to voluntarily surrender his license. The consent agreement does not

**Complaint 17-45 (Cont'd)**: contain any findings of fact. Ms. Young seconded the motion and it passed with Dr. Morse recused.

Dr. Dunbar made a motion to accept the licensee's offer to voluntarily surrender his license, and to dismiss complaint numbers 15-18 and 17-45. Ms. Foster seconded the motion and it passed with Dr. Morse recused and Dr. Howard opposed.

**Complaint 15-47**: A complaint was filed against a dentist alleging unprofessional conduct as a result of failing to diagnose and treat oral cancer, violated patient confidentiality, and a delay in providing patient records.

After review and discussion of the allegations, Dr. Morse made a motion to offer the licensee a consent agreement to resolve the complaint based on the licensee's failure to appropriately diagnose and treat her oral cancer in a timely manner which fell below the standard of care. The licensee would be required to take continuing education which has been pre-approved by the Complaint Officer, on interoffice communication and oral diagnosis worth six hours each. Dr. Davis seconded the motion. Both motions were withdrawn following further discussion.

Dr. Davis made a motion stating that the licensee failed to make an appropriate diagnosis which is failure to meet the standard of care and is a violation of the Dental Practice Act. Ms. Foster seconded the motion and it passed with Dr. Howard and Ms. Morse opposed and Dr. Dunbar recused as the Complaint Officer.

Ms. Young made a motion to withdraw the previous motion that stated there was a violation of the Dental Practice Act. Dr. Morse seconded the motion and it passed unanimously.

Ms. Foster made a motion to dismiss the complaint and issue a letter of guidance which will remain on file for five years. The letter of guidance will suggest that interoffice communication improve and that the practice as a whole complete a continuing education course relating to that subject. The motion was seconded and it passed with Dr. Howard opposed and Dr. Dunbar recused as the Complaint Officer.

**Complaint 16-91**: The Board generated a complaint against the licensee in order to further investigate whether a potential violation of Board Rule Chapter 9, Section II (W) as it relates to practice closure procedures occurred.

**Complaint 16-91 (Cont'd):** Following the review and discussion of the complaint materials, the Board voted to dismiss the complaint.

The licensee also requested that the Board allow him to place his dental license in an “inactive” status. The Board agreed with the licensee’s request and will inform him of the process, should he wish to activate his license in the future.

**Complaint 17-34:** A complaint was filed against a dentist alleging that the licensee damaged her upper front teeth while using a drill. Following the Board’s review of the complaint file, they voted to dismiss the complaint as the licensee passed away in November of 2015, and there is not a respondent/licensee available to proceed with the complaint investigation.

**Complaint 17-36:** This is a Board generated complaint based upon the alleged failure of a licensee to 1) report in writing to the Board within ten days, any criminal conviction; 2) a conviction of a crime that involves dishonesty or false statement; and 3) unprofessional conduct by violating a standard of professional behavior that has been established in the practice of dentistry. Ms. Foster made a motion to dismiss complaint 17-36, and to send the licensee a letter of education which reminds him of the law requiring notification to the Board within ten (10) days of any change of name or address, any criminal conviction, any licensure action, or any material change from the original application for licensure. Dr. Morse seconded the motion and it passed unanimously.

**Vice Chair Report:**

- Ms. Morse made a motion to nominate Dr. Howard to sit as a dentist member of the Subcommittee on Dental Hygienists, and to nominate Dr. Dunbar to sit on the Rules Committee. The motion passed unanimously.
  
- AADB Membership – Dr. Davis made a motion to nominate Ms. Foster to the American Association of Dental Boards as the Board representative. Dr. Morse seconded the motion and it passed with Ms. Foster recused.

**Review of Draft Basis Statement and Response to Comments – Chapter 13**

**“Continuing Education”:** The Board considered comments received on proposed rule, Chapter 13, and voted to accept some of the comments, triggering another 30 day public comment period. The changes will need to be reviewed and approved by the Governor’s Office. Once approval is received, then notice of the proposed changes will be advertised and distributed to

**Review of Draft Basis Statement and Response to Comments – Chapter 13**

**“Continuing Education” (Cont’d):** interested parties in accordance with the Administrative Procedures Act. Any additional comments received will be placed on a future Board agenda for review and discussion.

Ms. Foster made a motion to accept the changes made to Chapter 13. Dr. Morse seconded the motion and it passed unanimously.

**Rulemaking Timeline – Chapter 13:** Based on the changes made above, the draft timeline will be amended to reflect the additional comment period.

**Rulemaking Timeline – Chapter 14:** This adopted rule is currently under legal review by the Office of the Attorney General.

**Rulemaking Timeline – Chapters 2, 3, 5, 10, 11, 12, and 18:** The proposed rules are currently in the Governor’s Office for review prior to submitting to the Secretary of State’s Office for publishing.

**Board Meeting Minutes:**

- **June 9, 2017** – Dr. Davis made a motion to accept the minutes as drafted. Ms. Kasprak seconded the motion and it passed unanimously.
- **June 16, 2017** – Ms. Young made a motion to accept the minutes as drafted. Ms. Foster seconded the motion and it passed with Ms. Kasprak and Dr. Davis recused.
- **July 14, 2017** – Ms. Young made a motion to approve the minutes as drafted. The motion was seconded and it passed unanimously.

**Notification of Practice Closure dated July 22, 2017 – Wiscasset Dental:**

The information was accepted as an FYI.

**E-mail from Dr. Michael Sigler dated July 23, 2017 Re: Regulatory**

**Questions (Follow Up):** Dr. Sigler previously posed questions to the Board concerning licensure, scope of practice, etc. The Board responded requesting clarification of the information he seeking. Dr. Sigler responded to the Board’s request for clarification, and posing additional questions. Dr. Howard made a motion to respond thanking him for the additional clarification, and remind him that an individual providing dental services in Maine is required to be licensed by the board; that the Board does not regulate entities, or businesses;

**E-mail from Dr. Michael Sigler dated July 23, 2017 Re: Regulatory**

**Questions (Follow Up) (Cont'd):** and include the definition of dentistry. Dr. Morse seconded the motion and it passed unanimously.

**Overview of the Penobscot Community Health Center – Dental Clinic**

**Commission on Dental Accreditation (CODA) Visit – August 8, 2017:** Ms. Foster provided an overview of her recent participation in a CODA site visit for the one-year general practice residency program at Penobscot Community Health Center, Dental Clinic.

**Executive Director's Report:**

- Legislative Update – Ms. Vaillancourt reported to the members that the Legislature adjourned on August 2, 2017, which means that any non-emergent legislation will go into effect on November 1, 2017; and that an informational letter will be generated to licensees to make them aware of certain statutes that may impact the practice directly or indirectly.
- Statute Review – This is a standing agenda item for Ms. Vaillancourt to go over the Board's authorizing statute when time permits.
- Application Questions: Ms. Vaillancourt reported that there was a good discussion with legal counsel and members of the Subcommittee on Dental Hygienists earlier in the day regarding certain application questions. Further review and editing of the questions will be conducted and will be reported back for discussion at a future meeting.
- MPHP Protocols – Ms. Vaillancourt reported that there appears to be movement towards the finalization of the draft protocols between the Office of the Attorney General and the Medical Professionals Health Program.
- Delegation Chart – Once the application questions have been finalized, the delegation chart for application reviews will be updated. The current chart delegates the review of applications where the applicant has provided disclosures already reviewed and approved by the Board.
- Financial Report – Ms. Vaillancourt reported that there has been an increase in licensing numbers over the previous fiscal year.

*The following items were accepted as FYI's:*

- Letter from Frank R. Recker, DDS dated July 17, 2017 Re: Dental Specialty Advertising;
- E-mail from Michael Toner, Academy of General Dentistry dated July 23, 2017 Re: AGD Statement on Sedation;
- Letter from Gary Roberts, DDS & Kathleen O'Loughlin, DMD, American Dental Association dated July 28, 2017 Re: Letter from the Academy of General Dentistry;
- Thank You Note dated July 17, 2017 from Dr. Geraldine Schneider; and
- Continuing Education Approval List.

**Preliminary Agenda for Upcoming Meetings:** Ms. Morse informed members that she will be unavailable for the December meeting. Ms. Kasprak's last meeting on the Board will be September 15, 2017.

**Old Business:**

- Maine Medical Professionals Health Program – Draft Protocols: The information was accepted as an FYI.

**Case Management Reports:** The reports were accepted as an FYI.

Dr. Morse made a motion to adjourn at 3:09 p.m. Dr. Davis seconded the motion and it passed unanimously.

Respectfully Submitted,

Teneale E. Johnson

Executive Secretary